

10-5-2010

County of Boise v. ICRMP, Underwriters Clerk's Record Dckt. 37861

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IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

COUNTY OF BOISE, a political subdivision of the
State of Idaho,

PLAINTIFF-APPELLANT,

vs.

IDAHO COUNTIES RISK MANAGEMENT
PROGRAM, UNDERWRITERS (ICRMP), and
DOES I through X.,

DEFENDANTS-RESPONDENTS.

*Appealed from the District Court of the Fourth Judicial
District of the State of Idaho, in and for ADA County*

Hon CHERI C. COPSEY, District Judge

ROBERT T. WETHERELL

Attorney for Appellant

PHILLIP J. COLLAER

Attorney for Respondent

FILED - COPY
OCT - 5 2010
Supreme Court Court of Appeals
Entered on ATS by

COPY

37861

IN THE SUPREME COURT OF THE STATE OF IDAHO

COUNTY OF BOISE, a political subdivision
of the State of Idaho,

Supreme Court Case No. 37861

Plaintiff-Appellant,

vs.

IDAHO COUNTIES RISK MANAGEMENT
PROGRAM, UNDERWRITERS (ICRMP),
and DOES I through X,

Defendants-Respondents.

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE CHERI C. COPSEY

ROBERT T. WETHERELL

PHILLIP J. COLLAER

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

BOISE, IDAHO

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County Of Boise vs. Idaho Counties Risk Management Program Underwriter

County Of Boise vs. Idaho Counties Risk Management Program Underwriter

Date	Code	User		Judge
10/21/2009	NCOC	CCBOURPT	New Case Filed - Other Claims	Cheri C. Copsey
	COMP	CCBOURPT	Complaint Filed	Cheri C. Copsey
	SMFI	CCBOURPT	Summons Filed	Cheri C. Copsey
12/10/2009	ACCP	CCMCLILI	Acceptance Of Service (12/10/09)	Cheri C. Copsey
12/18/2009	ANSW	CCDWONCP	Answer to Complaint for Declaration Relief (Phillip J Collaer for Idaho Counties Risk Management Program (ICRMP)	Cheri C. Copsey
1/15/2010	HRSC	TCWEATJB	Hearing Scheduled (Status by Phone 02/12/2010 08:30 AM)	Cheri C. Copsey
2/2/2010	NOTS	CCNELSRF	Notice Of Service	Cheri C. Copsey
2/10/2010	MOSJ	CCMASTLW	Motion For Summary Judgment	Cheri C. Copsey
	MEMO	CCMASTLW	Memorandum in Support	Cheri C. Copsey
2/11/2010	CONT	TCWEATJB	Continued (Status by Phone 02/18/2010 08:30 AM)	Cheri C. Copsey
2/18/2010	HRHD	TCWEATJB	Hearing result for Status by Phone held on 02/18/2010 08:30 AM: Hearing Held	Cheri C. Copsey
	NOTS	CCDWONCP	Notice Of Service	Cheri C. Copsey
2/19/2010	HRSC	TCWEATJB	Hearing Scheduled (Motion for Summary Judgment 05/20/2010 03:00 PM)	Cheri C. Copsey
3/24/2010	MOTN	CCGARDAL	Motion for Partial Summary Judgment Regarding the Duty to Defend and in Opposition to Defendant's Motion for Summary Judgment	Cheri C. Copsey
	AFFD	CCGARDAL	Affidavit of Timothy R NcNeese	Cheri C. Copsey
	AFFD	CCGARDAL	Affidavit of Robert Wetherell in Support	Cheri C. Copsey
	MEMO	CCGARDAL	Memorandum in Support of Motion for Summary Judgment	Cheri C. Copsey
	NOHG	CCGARDAL	Notice Of Hearing 5.20.10 @ 3 pm	Cheri C. Copsey
5/5/2010	MEMO	CCWRIGRM	Defendants Combined Memorandum re Reply to Plaintiffs Opposition to Defendants Motion for Summary Judgment and in Opposition to Plaintiffs Motion for Partial Summary Judgment	Cheri C. Copsey
5/17/2010	AFFD	CCSIMMSM	Affidavit of Robert T. Wetherell	Cheri C. Copsey
5/20/2010	DCHH	CCCHILER	Hearing result for Motion for Summary Judgment held on 05/20/2010 03:00 PM: District Court Hearing Held Court Reporter: Kim Madsen Number of Transcript Pages for this hearing estimated: less than 100	Cheri C. Copsey
5/28/2010	DEOP	CCCHILER	Decision Or Opinion	Cheri C. Copsey
5/7/2010	JDMT	TCWEATJB	Judgment	Cheri C. Copsey
	CDIS	TCWEATJB	Civil Disposition entered for: Idaho Counties Risk Management Program Underwriter, Defendant; County Of Boise, Plaintiff. Filing date: 6/7/2010	Cheri C. Copsey
	STAT	TCWEATJB	STATUS CHANGED: Closed	Cheri C. Copsey

00003

Date: 9/2/2010

Fourth Judicial District Court - Ada County

User: CCTHIEBJ

Time: 03:29 PM

ROA Report

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Case: CV-OC-2009-20083 Current Judge: Cheri C. Copsey

County Of Boise vs. Idaho Counties Risk Management Program Underwriter

County Of Boise vs. Idaho Counties Risk Management Program Underwriter

Date	Code	User		Judge
7/9/2010	APSC	CCTHIEBJ	Appealed To The Supreme Court	Cheri C. Copsey
7/19/2010	AMEN	CCWRIGRM	Amended Notice of Appeal	Cheri C. Copsey

00004

OCT 21 2009

J. DAVID NAVARRO, Clerk
By P. BOURNE
DEPUTY

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ORIGINAL

Attorneys for County of Boise

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

COUNTY OF BOISE, a political
subdivision of the State of Idaho,

Plaintiff,

vs.

IDAHO COUNTIES RISK
MANAGEMENT PROGRAM,
UNDERWRITERS (ICRMP), and
DOES I through X,

Defendants.

Case No.

CV 00 0920083

**COMPLAINT FOR
DECLARATORY RELIEF**

COMES NOW Plaintiff, County of Boise, by and through its counsel of record, and for
cause of action against Defendant complains as follows:

INTRODUCTION

This is a claim for declaratory relief between Plaintiff, Idaho County and its insurer ICRMP, and alleges a breach of the insurance contract by Defendant ICRMP. Plaintiff brings this action pursuant to the Uniform Declaratory Judgment Act, Idaho Code § 10-1201 *et seq.*

PARTIES

1. At all times material hereto, Plaintiff County of Boise was a political subdivision of the State of Idaho and conducts its affairs and its principal place of business in Idaho City, Boise County, Idaho, the county seat of Boise County. As a political subdivision of the State of Idaho, Boise County has jurisdiction to make decisions involving the unincorporated areas of the county of Boise through its Board of Commissioners and through the Boise County Planning and Zoning Commission and such decisions affect the civil and constitutional rights of citizens and entities of the United States of America.

2. At all times material hereto, Defendant Idaho Counties Risk Management Program, Underwriters (“ICRMP”) is a reciprocal insurer organized pursuant to Idaho Code Section Title 41, Chapter 29 and is organized pursuant to a joint exercise of powers among political subdivision of the state of Idaho pursuant to I.C. § 67-2326 through 67-2333 and as defined by the Idaho Tort Claims Act.

3. The true names and capacities, whether individual, corporate, associate, or otherwise of Defendant Does I through X, inclusive, are unknown to Plaintiff at this time. Plaintiff sues those Defendants by such fictitious names and will amend this Complaint to show their true names and capacities when they have been ascertained. Plaintiff is informed and believes, and on the basis of

such information and belief, alleges that each Defendant designated as Doe is negligently or otherwise legally responsible for the events and happenings referred to in this Complaint.

4. Plaintiff, County of Boise, as a subdivision of the state of Idaho, has the authority to purchase liability insurance for itself and its employees pursuant to I.C. § 6-923 and make contract for property and other insurance coverage as deemed necessary and proper.

5. Plaintiff did in fact purchase and contract for other insurance coverage from ICRMP which is deemed necessary. A copy of the Contract of Insurance is attached hereto as Exhibit "A."

6. Plaintiff and Defendant agreed to a joint power subscriber agreement and Plaintiff has fulfilled all the requirements under the joint power subscriber agreement and the ICRMP policy of insurance and has exhausted all requirements and administrative remedy prior to filing this suit. This suit is brought properly pursuant to the subscriber agreement and the policy of insurance attached hereto as Exhibit "A."

7. The purpose of the joint power subscriber agreement and the policy of insurance attached hereto as Exhibit "A" was to provide insurance and risk management assistance to members such as County of Boise and to defend its members, such as County of Boise against claims being made against said members, their employees, officers or agents, whether appointed, employed, elected or serving as recognized volunteers.

8. Both Defendant and Plaintiff agreed to follow an internal dispute resolution procedure before contesting coverage or claims for non-payment issues in the court of law. Both Plaintiff and Defendant have fulfilled their duties pursuant to the member agreement and the dispute herein is ripe for resolution by a court of law.

9. That upon fulfilling their obligations under the joint subscriber agreement, Defendant has made a final decision pursuant to the procedures set forth in its policies and that final decision has been to deny coverage for the County of Boise, for both defense and indemnity, for the cause of action brought by *Alamar Ranch, LLC*, an Idaho limited liability company and by *YTC, LLC*, a real estate holding company which owned property in Boise County for development by the leasing agent *Alamar*.

JURISDICTION

10. Jurisdiction is proper in the District Court of the District of Idaho and for the County of Ada and the amount of damages exceeds \$10,000.00 and the principal place of business of ICRMP Insurance is in Ada County, city of Boise, state of Idaho.

11. The trial court has jurisdiction pursuant to Idaho Code § 1-705.

12. Venue is proper in Ada County pursuant to Idaho Code § 5-404.

FACTS

13. On or about January 13, 2009, *Alamar Ranch, LLC*, filed an action in U.S. District Court, District of Idaho, against County of Boise alleging violations of the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* The violations are alleged in connection with the: (1) County of Boise Planning and Zoning Commission's denial of a conditional use permit for a residential treatment facility designed to house individuals allegedly protected under the Fair Housing Act, namely teenage males suffering from mental and/or emotional illnesses and/or drug/alcohol addiction; and/or (2) County of Boise Board of Commissioners' imposition of conditions of permit approval that

Alamar Ranch alleges were “pretext designed to conceal the Board’s discriminatory motive” of “prevent[ing] Alamar from building housing that would serve youth protected under the FHA.” A copy of that Complaint is attached hereto as Exhibit “B.” At a later date an Amended Complaint was filed that contains the same or similar allegations.

14. At the time of the Complaint filed by *Alamar*, Plaintiff had in effect Policy of Insurance 28A01008100108 for the policy period from October 1, 2008 through October 1, 2009. The policy was retroactive to November 29, 1985 in that Plaintiff has been a member of ICRMP since that time. (ICRMP Public Entity Multi-Lines Insurance Policy, Policy No. 28A01008100108, which included Errors and Omissions insurance coverage.)

15. The complaint of *Alamar* against Defendant County of Boise, alleges certain civil rights violations against the County pursuant to the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* (FHA Claims) As set forth in the Complaint, *Alamar* alleged to be an “aggrieved person” under the statute and brought suit alleging that they had been discriminated against by Plaintiff because of the “handicapped” status.

16. Some, but not all, of the allegations in the Complaint, included allegations that Plaintiff denied *Alamar* their civil rights by denying them equal opportunity to use and enjoy dwellings within Boise County; that Boise County arbitrarily and capriciously and unreasonably denied *Alamar* its civil rights in violation of the due process clause of the United States of America; that Plaintiff engaged in “discriminatory reasons” in making certain decisions affecting the civil rights of *Alamar*.

17. That Plaintiff timely tendered the civil rights litigation filed against it to Defendant and receipt of the litigation was acknowledged by Defendant.

18. That pursuant to the subscriber agreement, Plaintiff and Defendant have followed the procedures set forth in appealing the denial of coverage by Defendant and therefore this legal action is proper pursuant to the contract of insurance issued by Defendant and the subscriber agreement between the parties.

COUNT I - BREACH OF CONTRACT

19. Plaintiff realleges the allegations contained in each and every paragraph hereinabove.

20. Plaintiff has performed all conditions preceding to the contract of insurance issued by Defendant in this action.

21. Defendant's refusal to pay benefits under the contract of insurance was unjustified and amounted to a breach of contract, which such breach has proximately caused Plaintiff to suffer damages including but not limited to attorneys fees, costs, interest and other expenses.

22. Plaintiff is entitled to an award of damages, both special and general, in an amount to be proven at trial.

23. The Complaint attached hereto as Exhibit "B" sets forth causes of action covered by the policy of insurance pursuant to the plain and ordinary meaning of the terms set forth in the contract.

24. That the breach of contract alleged herein includes both the breach of the duty to defend under the contract of insurance attached hereto as Exhibit "A" and the breach of the contract to indemnify as contained in the contract of insurance.

25. As a direct and proximate result of Defendant's breach of its duties under the contract, Plaintiff has suffered actual loss or damage to be proven at trial.

COUNT II - ATTORNEYS FEES

26. Plaintiff realleges the allegations contained in each and every paragraph hereinabove.

27. It has been necessary for Plaintiff to hire the law firm of Brassey, Wetherell & Crawford to prosecute this action.

28. Plaintiff is entitled to reasonable attorneys fees and costs and interest pursuant to I.C. § 12-121 and I.C. § 41-1839 relating to attorneys fees and suits against insurers.

DAMAGES

29. As a direct and proximate result of Defendant's conduct, Plaintiff has suffered substantial damages, including but not limited to, special damages as actual out-of-pocket costs for hiring counsel to defend it in the *Alamar* civil rights suit, general damages, consequential damages and attorneys fees and costs incident to prosecuting this action, all in an amount to be proven at trial. Plaintiff has, at the time of filing this suit, suffered damages in excess of \$10,000.00 and to a larger amount to be proven at trial.

WHEREFORE, Plaintiff prays for judgment against Defendant declaring:

1. Plaintiff was an insured under ICRMP Policy No. 28A01008100108;
2. The claims asserted against Plaintiff in *Alamar Ranch, LLC, v. County of Boise*, 1:09-CV-00004, and the insurance claims made by Plaintiff related to the *Alamar* litigation are claims covered by the Errors and Omissions Insuring Agreement of ICRMP Policy No. 28A01008100108;
3. The claims asserted against Plaintiff in *Alamar Ranch, LLC, v. County of Boise*, 1:09-CV-00004, and the insurance claims made by Plaintiff related to the *Alamar* litigation are not subject to any exclusions from Errors and Omissions coverage under ICRMP Policy No. 28A01008100108;

4. Defendant has a duty in contract and equity to defend Plaintiff against claims asserted against it in *Alamar Ranch, LLC, v. County of Boise*, 1:09-CV-00004;

5. Defendant has a duty in contract and equity to indemnify Plaintiff for any damages arising from claims asserted against it in *Alamar Ranch, LLC, v. County of Boise*, 1:09-CV-00004;

6. All rights and obligations of the parties hereto; and

7. Such other relief as the Court may deem just and proper.

DATED this 21 day of October, 2009.

BRASSEY, WETHERELL & CRAWFORD

By

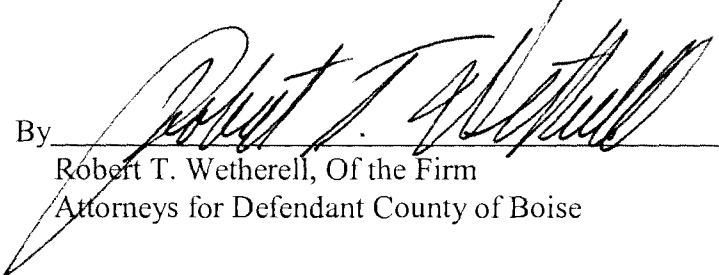

Robert T. Wetherell, Of the Firm
Attorneys for Defendant County of Boise

EXHIBIT A

Thomas A. Banducci (ISB: 2453)
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 Wade L. Woodard (ISB: 6312)
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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF IDAHO**

<p>ALAMAR RANCH LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>COUNTY OF BOISE,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No.</p> <p style="text-align: center;">COMPLAINT AND DEMAND FOR JURY TRIAL</p>
---	--

Plaintiff, Alamar Ranch, LLC ("Alamar"), by and through its counsel of record, Banducci Woodard Schwartzman, PLLC, for its complaint, alleges as follows:

PARTIES

1. Alamar is an Idaho limited liability company and the developer of a proposed residential treatment facility ("RTC") and private school that would be located on a portion of a 123-acre parcel located at 94 Klam Ranch Road, in Boise County, Idaho (the "Property").

///

COMPLAINT AND DEMAND FOR JURY TRIAL – PAGE 1

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2. The County of Boise ("Boise County") is a political subdivision of the State of Idaho having jurisdiction to make land use and zoning decisions in the unincorporated areas of the County of Boise, through the Board of Commissioners (the "Commission") and through the Boise County Planning and Zoning Commission ("P & Z").

JURISDICTION AND VENUE

3. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331. Venue is properly conferred on this Court pursuant to 28 U.S.C. § 1391(b) because, upon information and belief, Boise County is subject to personal jurisdiction in this District, the events took place in this District and the at-issue real property is located in this District.

GENERAL ALLEGATIONS

4. This case arises out of Boise County's violations of the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* ("FHA").

5. At all relevant times Boise County was zoned as "mixed use," meaning dissimilar uses were intended to coexist. That coexistence is sometimes ensured through the conditional use process.

6. On April 19, 2007, Alamar submitted an application to the P & Z requesting a Conditional Use Permit ("CUP") allowing Alamar to operate a 72-bed RTC and private school on the Property. The would-be residents of the proposed RTC are deemed to be "handicapped" for purposes of the FHA as they would include 12-17 year-old males suffering from mental or emotional illnesses and/or recovering from drug or alcohol abuse. Alamar was required to apply for a CUP because the RTC is identified by Boise County as a use to be reviewed by Boise County under the conditional use process. The question under the CUP process, however, is not whether this proposed use should be allowed (it is an allowed use) but whether conditions of

approval are warranted to ensure that such use does not “cause any damage, hazard, nuisance or other detriment to persons, property, or natural resources in the vicinity.”

7. On August 2, 2007, Alamar presented its application to the P & Z during a public hearing. Members of the public testified for and against the application. On August 15, 2007, the P & Z once again convened to request responses from both Alamar as well as members of the public opposed to the application.

8. During both hearings the opponents of the application, consisting mostly of local residents, objected to the application on numerous discriminatory grounds. The message that was presented by these opponents in essence was “we don’t want teenage alcoholics and drug addicts in our neighborhood.”

9. Demonstrators against Alamar made their feelings known not only during the hearings, but also by presenting false and misleading information on their blog site (www.noalamararanch.com), illegal signs on State Highway 21, and a folk-singer rally—all designed to stir up frenzy and fear among the residents of Boise County.

10. Although Alamar satisfied its burden of demonstrating at the hearing that Alamar’s project satisfied each of the nine standards in the Boise County Zoning and Development Ordinance (“BCZDO”) for issuance of a CUP, the application was denied by vote of the P & Z commissioners at the conclusion of the August 15, 2007 hearing (the P & Z arrived at a 3-3 tie vote on the motion, which Boise County deemed a denial of the application).

11. On September 28, 2007, the P & Z issued a written decision denying Alamar’s application. Because there was no basis within the CUP standards to deny the application, the P & Z commissioners, as a pretext, manufactured the following reasons for the denial of the application: (1) “the development of the residential treatment center was not appropriate in the

proposed location at the current time”; and (2) “the County lacked sufficient infrastructure or money to monitor and enforce the conditions that were proposed for approval of the application.”

Neither rationale is among those listed in the BCZDO for denial of a CUP.

12. On October 18, 2007, Alamar timely filed a notice of appeal of the P & Z’s decision to the Boise County Board of Commissioners (“Board”). In its appeal, Alamar informed Boise County that it had a duty under the FHA to approve the CUP and allow the project to be built so that housing could be made available for the “handicapped” youth that Alamar proposed to serve. In its appeal brief, Alamar requested Boise County to make reasonable accommodations to allow this housing to be built to serve “handicapped” youth.

Alamar Ranch respectfully requests that the commission (1) identify the specific provisions of Boise County’s ordinance that it believed would have to be waived or varied to allow the development, (2) identify the specific aspects of the development that alleged do not comply with the ordinance, and then (3) consider whether those aspects of the code can be waived or varied to accommodate Alamar Ranch’s request.

13. The Board heard the appeal at a public hearing held on January 28, 2008. The Board closed the public hearing, but did not deliberate toward a decision. Again, both at the hearing and outside of the hearing, the opposition was extremely vocal and threatening. The opposition’s message was the same: “we don’t want teenage alcoholics and drug addicts in our neighborhood.”

14. The Board deliberated (on the record) on March 10, 2008. The Board, knowing that it could not issue an absolute denial of the application, instead reversed the denial of the application. In doing so, however, it carried out its discriminatory purpose of preventing the project from being built by knowingly imposing numerous conditions on the CUP that individually or cumulatively made the proposed use of the property impossible. In essence, the

conditions were a pretext designed to conceal the Board's discriminatory motive of preventing the project from being built.

15. On April 21, 2008, the Board entered a written decision and order delineating several onerous, arbitrary and discriminatory conditions for the permit. Among the conditions which made the proposed use of the site impossible, were the following: (1) limiting the number of residents at Alamar to 24, (2) requiring Alamar to construct a helicopter landing pad at the site, and (3) requiring Alamar to purchase and maintain a fire suppression vehicle on the site.

16. As a result of the conditions placed on the CUP by the Board, the proposed RTC is no longer economically feasible. By itself, the condition limiting the number of residents destroyed the economic viability of the project. In essence, Boise County refused Alamar's request for reasonable accommodations by placing conditions on the CUP aimed at ensuring the project would not be economically feasible.

17. Boise County's conduct prevented the project from being developed and thereby prevented Alamar from building housing that would serve youth protected under the FHA. In so doing, Boise County has violated the FHA.

18. The would-be residents of the RTC proposed by Alamar are "handicapped" for purposes of the FHA.

19. Alamar, as the developer of housing for handicapped individuals, is an "aggrieved person" that may bring this action.

**COUNT ONE
VIOLATION OF THE FHA:
REASONABLE ACCOMMODATION**

20. The allegations included in the above paragraphs are incorporated by reference and made a part hereof.

COMPLAINT AND DEMAND FOR JURY TRIAL – PAGE 5

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21. As set forth above, Alamar submitted an application to develop a residential treatment center for handicapped individuals.

22. Boise County knew or reasonably should have known the application was for housing for handicapped individuals.

23. Accommodation of the handicap is necessary to afford the would-be residents an equal opportunity to use and enjoy the dwellings.

24. The accommodation requested by Alamar was reasonable.

25. Boise County refused to make the necessary accommodation by placing onerous, arbitrary and unreasonable conditions on the approval of the application which destroyed the feasibility of the project.

26. As a result of Boise County's violations of the FHA, Alamar has suffered damages in excess of the jurisdictional minimum of this Court. Alamar will establish the precise amount of damages according to proof at trial.

**COUNT TWO:
VIOLATION OF THE FHA
DISPARATE TREATMENT**

27. The allegations included in the above paragraphs are incorporated by reference and made a part hereof.

28. Alamar applied for, and was qualified to receive, a conditional use permit for the proposed RTC.

29. Boise County effectively denied the permit by placing onerous, arbitrary and unreasonable conditions on the permit.

30. Upon information and belief, Boise County has approved other developments without such conditions.

COMPLAINT AND DEMAND FOR JURY TRIAL – PAGE 6

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31. Upon information and belief, a discriminatory reason more likely than not motivated the challenged decision of Boise County.

32. As a result of Boise County's discriminatory conduct, Alamar has suffered a distinct and palpable injury. The damages suffered by Alamar are in excess of the jurisdictional minimum of this Court. Alamar will establish the precise amount of damages according to proof at trial.

**COUNT THREE:
VIOLATION OF THE FHA
PROHIBITION AGAINST INTERFERENCE**

33. The allegations included in the above paragraphs are incorporated by reference and made a part hereof.

34. The anticipated residents of the RTC described in Alamar's application are protected under the FHA.

35. Alamar aided or encouraged these would-be residents in the exercise of their rights to housing under the FHA.

36. Boise County unlawfully interfered with the exercise of those rights by obstructing the construction or availability of housing for individuals protected under the FHA. Pursuant to 42 U.S.C. § 3613(c), Alamar requests punitive damages.

37. As a result of Boise County's violations of the FHA, Alamar has suffered damages in excess of the jurisdictional minimum of this Court. Alamar will establish the precise amount of damages according to proof at trial.

REQUEST FOR PUNITIVE DAMAGES

38. Pursuant to 42 U.S.C. § 3613(c), Alamar requests punitive damages.

EXHIBIT B

Policy Year 2008-2009

Public Entity

Multi-Lines Insurance Policy



Boise County

Idaho Counties Risk Management Program, UNDERWRITERS
3100 Vista Ave., Suite 300, Boise, ID 83705 Phone: (208) 336-3100 Fax: (208) 336-2100



00023

PUBLIC ENTITY MULTI-LINES INSURANCE POLICY DECLARATIONS

Issued By

IDAHO COUNTIES RISK MANAGEMENT PROGRAM, UNDERWRITERS

Named Insured: **Boise County**
 Address: **PO Box 1300**
Idaho City, Idaho 83631

Policy No.: **28A01008100108**
 Policy Period: From: **October 1, 2008**
 To: **October 1, 2009**

Application Date: **August 1, 2008**
 Retroactive **November 29, 1985**
 Term: (Section IV Only)

Member **\$115,792**
 Contribution:

**THE INSURANCE PROVIDED BY THIS POLICY SUPERSEDES
 ALL INSURANCE PREVIOUSLY AFFORDED BY ANY OTHER ICRMP POLICY.**

TYPES OF COVERAGE	LIMITS OF COVERAGE	COVERAGE BASIS	DEDUCTIBLE
SECTION I - Buildings, Structures and Personal Property/Automobile Physical Damage/Operational Disruption Expense/Valuable Papers & Records			
A. Buildings, Structures and Personal Property;	Schedule of Values	Per Covered Occurrence	* The First \$1,000 of any Loss. This Deductible is applicable to Section I, Coverages A, B, C, and D.
• Architect's Fees	\$250,000	Per Covered Occurrence	
• Fine Arts	\$500,000	Per covered occurrence or in the aggregate for multiple occurrences	
• Ordinance Deficiency	\$5,000,000	Per Covered Occurrence	
• Preservation of Property	\$25,000	Per Covered Occurrence	
• Property in Course of Construction			
New	\$100,000	Per Covered Occurrence	
Repairs/Renovations of Existing	\$1,000,000	Per Covered Occurrence	
• Service Animals	\$10,000	Per Covered Occurrence	
B. Automobile/Mobile Equipment Physical Damage	\$1,000,000	Per Covered Occurrence	
C. Operational Disruption Expense	\$1,000,000	Per covered occurrence or in the aggregate for multiple occurrences.	
D. Valuable Papers and Records	\$100,000	Per covered occurrence or in the aggregate for multiple occurrences.	
Flood & Earthquake			
FLOOD	\$50,000,000	In the Aggregate Annually for all ICRMP Members Collectively.	Flood High Hazard Zones: \$500,000 per Building \$500,000 Personal Property
• High Hazard Zones (A&V)	\$5,000,000	In the Aggregate Annually for all ICRMP Members Collectively.	Flood Moderate Hazard Zones: \$100,000 per Building \$100,000 Personal Property
• Moderate Hazard Zones (B&X)	\$25,000,000	In the Aggregate Annually for all ICRMP Members Collectively.	
EARTHQUAKE	\$50,000,000	In the Aggregate Annually for all ICRMP Members Collectively.	Earthquake: \$100,000 of any Covered Loss

TYPES OF COVERAGE	LIMITS OF INDEMNIFICATION		LIMITS OF DEFENSE COSTS	COVERAGE BASIS	DEDUCTIBLE
	For Claims Brought Pursuant to Title 6, Ch. 9, Idaho Code	For All Other Claims	For All Liability Claims		
SECTION II - General Liability and Premises Medical Payments Insuring Agreement					
A. General Liability	\$ 500,000	\$3,000,000	\$2,000,000	Per Covered Occurrence	* \$0.00 (no deductible) for Section II, Coverages A, B & C.
• City/County Prosecutors Or Appointed City Attorneys serving as Independent contractors	\$ 500,000	\$ 500,000	\$2,000,000	Per Covered Occurrence	
• Sewer Backup Mold & Fungus Abatement & Remediation	\$ 500,000	\$ 500,000	\$2,000,000	Per Covered Occurrence	
B. Premises and Operations Medical Payments	\$ 5,000 \$ 100,000	\$ 5,000 \$ 100,000		Each Person Each Accident	
C. Law Enforcement Liability	\$ 500,000	\$3,000,000	\$2,000,000	Per Covered Occurrence	
SECTION III - Automobile Liability and Automobile Medical Payments					
A. Automobile Liability	\$ 500,000	\$3,000,000	\$2,000,000	Per Covered Occurrence	* \$0.00 (no deductible) for Section III, Coverages A, B & C.
B. Automobile Medical Payments	\$ 5,000 \$ 100,000	\$5,000 \$ 100,000		Each Person Each Accident	
C. Uninsured/Underinsured Motorists/No Fault	\$ 500,000	\$500,000	\$2,000,000	Per Covered Occurrence	
SECTION IV - Errors and Omissions Insurance					
CLAIMS MADE COVERAGE ONLY					
A. Errors and Omissions	\$ 500,000	\$3,000,000	\$2,000,000	Per Covered Occurrence	* \$0.00 (no deductible) for Section IV, Coverages A & B.
• City/County Prosecutors Or Appointed City Attorneys serving as Independent contractors	\$ 500,000	\$ 500,000	\$2,000,000	Per Covered Occurrence	
B. Employee Medical Insurance Benefit Liability	\$ 500,000	\$3,000,000	\$2,000,000	Per Covered Occurrence	
\$ 5,000,000 Indemnification Limit In the Aggregate Annually For Section II, III and IV Combined \$ 3,000,000 Defense Cost Limit In the Aggregate Annually For Section II, III and IV Combined					

TYPES OF COVERAGE	LIMITS OF COVERAGE	COVERAGE BASIS	DEDUCTIBLE
SECTION V - Crime Insurance			
<i>(Including Coverage for Public Officials in Lieu of Surety Bond Requirements)</i>			
A. Employee Dishonesty	\$ 500,000	Per Covered Occurrence	* The First \$1,000 of any Loss. This Deductible is applicable to Section V, Coverages A, B, C, D and E.
B. Loss Inside the Premises	\$ 500,000	Per Covered Occurrence	
C. Loss Outside the Premises	\$ 500,000	Per Covered Occurrence	
D. Money Orders and Counterfeit Paper Currency	\$ 500,000	Per Covered Occurrence	
E. Depositor's Forgery	\$ 500,000	Per Covered Occurrence	
SECTION VI - Boiler and Machinery			
* The First \$1,000 of any Loss. This Deductible is applicable to Section VI, All Coverages.			
A. Damaged Property			
▪ Off-Premise Property Damage	\$ 100,000	Per Covered Occurrence	
▪ Data or Media (Property)	\$ 100,000	Per Covered Occurrence	
▪ Data or Media (Bus. Income & Extra Expense)	\$ 100,000	Per Covered Occurrence	
▪ Ammonia Contamination	\$ 1,000,000	Per Covered Occurrence	
▪ Consequential Loss	\$ 1,000,000	Per Covered Occurrence	
▪ Hazardous Substance	\$ 500,000	Per Covered Occurrence	
▪ Water Damage	\$ 2,500,000	Per Covered Occurrence	
▪ Fungus	\$ 15,000	Per Covered Occurrence	
B. Expediting Expenses	\$ 2,500,000	Per Covered Occurrence	
C. Business Income and Extra Expense	Included in Annual Aggregate	Per Covered Occurrence	
D. Spoilage Damage	\$ 1,000,000	Per Covered Occurrence	
E. Utility Interruption	\$ 2,500,000	Per Covered Occurrence	
F. Newly Acquired Premises	\$ 5,000,000	Per Covered Occurrence	
G. Ordinance or Law	\$ 5,000,000	Per Covered Occurrence	
H. Errors and Omissions	\$10,000,000	Per Covered Occurrence	
Overall Aggregate Equipment Breakdown Limit	\$100,000,000	In the Aggregate Annually Per Covered Occurrence, Respects Section VI	

TYPES OF COVERAGE	LIMITS OF INDEMNIFICATION	LIMITS OF DEFENSE COSTS	COVERAGE BASIS	DEDUCTIBLE
SECTION VII – Chemical Spraying Activities Liability, Medical Payments & Emergency Clean-Up Expenses				
CLAIMS MADE COVERAGE ONLY				
A. Chemical Spraying Activities Liability	\$ 500,000	\$ 500,000	Per Covered occurrence and/or in the aggregate for multiple occurrences.	* The First \$0 of any Loss. This Deductible is applicable to Section VII, Coverages A, B, and C.
B. Medical Payments	\$ 5,000 \$ 10,000		Each Person Each Accident	
C. Emergency Clean-Up Expense	\$ 5,000 \$ 10,000		Each Person Each Accident	

NOTICE RE: INSURANCE GUARANTY ASSOCIATION

As required by Article 12, Section 4 of the Idaho Constitution and Idaho Code Section 41-3603(10), the ICRMP Program is not a participant in the Idaho Insurance Guaranty Association. As such, ICRMP Subscribers are not responsible for the costs of private insurer insolvencies, nor are they or claimants against them entitled to any of the protections which participation in the Guaranty Association would provide. This notice is provided in cooperation with the Idaho Insurance Guaranty Association. For additional information concerning this notice, contact the ICRMP Executive Director at 1-800-336-1985 or Doug Colwell at (208) 344-6565.

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GENERAL DEFINITIONS

Unless otherwise stated, the following definitions are applicable to all Sections and Coverages of this Policy.

"Insured" means not only the **Named Insured**, but also:

1. Any elected or appointed official serving as a volunteer or employee of the **named insured**, as well as any volunteer or employee of the **named insured** while acting within the scope of their duties as such. This does not include any appointed or elected official or employee who is serving the **named insured** as an independent contractor.
2. The Jail Standards Coordinator, when his or her performance of duties relates to a **named insured**.
3. City or County Prosecutors or appointed City Attorneys while serving as Independent Contractors in the course and scope of their statutory roles.
4. With regard to **Section III, Coverage A** (Automobile Liability), any person while using an owned **automobile** or a hired **automobile** and any person or organization legally responsible for the use thereof, provided the actual use of the **automobile** is by the **named insured** or with its permission, and any official of the **named insured** with respect to the use of non-owned **automobiles** in the business of the **named insured**.
5. With regard to **Section III, Coverage's B and C** (Automobile Medical Payments and Uninsured/Underinsured Motorist), anyone occupying an insured **automobile** with the permission of the owner.

This Policy, with respect to any person or organization other than the **named insured**, does not apply:

1. To any person or organization, or to any agent or employee thereof, operating an automobile sales agency, repair shop, service station, storage garage or public parking place, with respect to any **accident** arising out of the operation thereof.
2. To any employee with respect to injury to or sickness, disease or death of another employee of the same employer injured in the course of such employment in an **accident** arising out of the maintenance or use of the **automobile** in the business of such employer.
3. With respect to any hired **automobile**, to the owner or a lessee thereof, other than the **named insured**, nor to any agent or employee or such owner or lessee.

"Named Insured" means the public entity identified in the Declarations of this Policy.

GENERAL INSURING AGREEMENT

Idaho Counties Risk Management Program, Underwriters (ICRMP) agrees with the *insured* named in the Declarations made a part hereof, in consideration of the payment of the member contribution and in reliance upon the statement of Declarations, and subject to the Limits of Coverage, conditions, exclusions and other terms of this Policy, as follows.

Throughout this Policy, "we", "us", and "our" mean Idaho Counties Risk Management Program, Underwriters (ICRMP). "You" and "your" mean the *named insured* identified in the Declarations of this Policy.

We will provide the insurance described in this Policy and Declarations if you have paid the member contribution and have complied with the Policy provisions and conditions. This Policy is divided into seven Sections, some with multiple coverages. You have only the coverages for which you have paid member contributions. These types of coverages are indicated in the Declarations and are subject to the indicated Limits of Coverage.

The liability coverages afforded by this policy to respond for *claims for damages* brought pursuant to Title 6, Chapter 9, Idaho Code (the Idaho Tort Claims Act) are expressly limited to five hundred thousand dollars (\$500,000) per occurrence. It is the express intent of ICRMP to limit exposure and coverage to the limits established by statute. Any reference to liability coverage amounts in excess of five hundred thousand dollars (\$500,000) contained in this policy shall not apply to *claims* brought pursuant to the Idaho Tort Claims Act Title 6, Chapter 9, Idaho Code.

Certain provisions in this Policy restrict coverage. The entire Policy should be read carefully to determine your rights and duties, and to determine what is and is not covered.

GENERAL CONDITIONS

Unless otherwise stated, the following conditions are applicable to ALL Sections of this Policy.

1. **Apportionment.** In the event a *suit* alleges a *claim* which is covered by the terms of this Policy and a *claim* which is not covered by the terms of this Policy, our obligation for the costs of defense and payment of any award or settlement for *damages* shall be limited to only those sums related to a covered *claim*.
2. **Assignment.** Assignment of interest under this Insurance shall not bind us unless our written consent is obtained prior to such assignment.
3. **Bankruptcy and Insolvency.** In the event of bankruptcy or insolvency of you or any entity comprising you, we shall not be relieved of the payment of any *claim* by you or against you or the liquidator, receiver or statutory successor of you under this Policy without diminution because of your insolvency.
4. **Cancellation by Withdrawing Member/Expulsion.** This insurance is cancelable by you by sending written request of cancellation to us. The effective date of the cancellation will be either the date you requested or the date we received notice, whichever is later. A notice to cancel will be treated as a Notice to Withdraw from the ICRMP program.

This insurance is available only through faithful participation as a Member of the ICRMP Program. If you are expelled from the Program, insurance coverage pursuant to this policy is terminated. You may be expelled from the Program pursuant to the terms and conditions of the JOINT POWERS SUBSCRIBER AGREEMENT effective as of the date of this Policy.

5. **Concealment or Fraud.** This Policy is void if it was obtained by misrepresentation, fraud or concealment of material facts by you or your agent before or after loss.
6. **Currency.** The member contribution and losses under this Insurance are payable in currency of the United States.
7. **Declarations.** By acceptance of this Policy you agree that the Declarations accurately indicate the coverages you have purchased.
8. **Defense of Claims or Suit.** We may investigate or settle any covered *claim* or *suit* against you. We will provide a defense with counsel of our choice, at our expense, if you are sued for a covered *claim*.
 - a. With respect to claims or suits involving Section II – General Liability Insurance and Premises Medical Payments, Section III – Automobile Liability Insurance and Automobile Medical Payments and Section IV – Errors and Omissions Insurance, our defense costs incurred will not exceed \$2,000,000 per covered claim, subject to \$3,000,000 in the aggregate for Sections II, III, and IV combined for all covered claims that are subject to this Policy's policy period. The "per covered claim" defense costs amount is the most we will incur regardless whether one or more of Sections II, III and IV are involved in a single claim, and is in addition to the Limits of Indemnification shown in the Declarations. Our obligation to defend any *claim* or *suit* ends when either:
 - (1.) The amount of loss or *damages* we pay equals the Limit(s) of Indemnification afforded under this Policy, or
 - (2.) The defense costs incurred by us equal \$2,000,000 per covered claim or the defense costs incurred by us equal \$3,000,000 aggregate for the policy period.
 - b. Notwithstanding the aforementioned, we will have no duty to investigate or defend any *claim*, *suit*, dispute, disagreement or other proceeding seeking relief or redress in any form other than money *damages*, including but not limited to costs, fees, or expenses which any *Insured* may become obligated to pay as a result of a consent decree, settlement, adverse judgment for

declaratory relief or injunctive relief. Such denial of investigation or defense includes, but shall not be limited to any **claim, suit**, dispute, disagreement or other proceeding:

- (1.) By or on behalf of any **Insured**, whether directly or derivatively, against:
 - (a.) Any other **Insured**; or
 - (b.) Any other federal, state or local governmental entity or politically subdivision;
- (2.) By the spouse, child, parent, brother, or sister of any **Insured** for consequential injury as a result of any injury to an **Insured**; or
- (3.) Involving any intergovernmental agreement(s) where any **Insured** is a party to the agreement(s).

9. **Dispute Resolution Procedure.** You and we agree that it is in our mutual interest to have a dispute resolution procedure in order to resolve potential disputes and disagreements as to whether or not a claim is covered by the terms and conditions of this Policy. You and we agree that the dispute resolution procedure as set out in the JOINT POWERS SUBSCRIBER AGREEMENT currently in force as of the date of this Policy shall apply to resolve any potential disputes and disagreements as to coverage

a. Inapplicable to Certain Disputes and Disagreements.

- (1) These dispute resolution procedures do not apply to the Appraisal condition set forth in the Specific Conditions Applicable to the Property Insuring Agreements in, Section I of this Policy, or the Arbitration condition set forth in the Specific Conditions Applicable to the Automobile Insuring Agreements set out in, Section III of this Policy.
- (2) These Dispute Resolution Procedures do not apply in any way to our decisions regarding claim settlement, claim payment or nonpayment, or the claim investigation process.

10. **Duties After Occurrence, Claim or Suit.**

a. You must see to it that we are notified as soon as practicable of an occurrence which may reasonably result in a **claim**. To the extent possible, notice should include:

- (1) How, when and where the occurrence, **claim** or **suit** took place.
- (2) The names, addresses and telephone numbers of any injured persons and witnesses.
- (3) The nature and location of any injury or damage arising out of the occurrence, **claim** or **suit**.

b. If a **claim** is made or **suit** is brought against any **insured**, you and any involved **insured** must:

- (1) Immediately send us copies of any **claims**, demands, notices, summonses or legal papers received in connection with the **claim** or **suit**.
- (2) See that we receive written notice of the **claim** or **suit** as soon as practicable.
- (3) Authorize us to obtain records and other information, and submit to a sworn statement, if requested.
- (4) Cooperate with us in the investigation, or defense of the **claim** or **suit**, including but not limited to, attendance at hearings and trials, securing and giving evidence, and obtaining the attendance of witnesses.
- (5) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to you because of injury or damage to which this Insurance may also apply.

- c. You shall not, except at your own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for **first aid**, without our consent.
- d. Your failure to comply with the foregoing duties shall constitute a material breach deemed prejudicial to us, thereby entitling us to refuse any coverage for the occurrence, **claim** or **suit**, or any duties arising therefrom.
11. **Entire Agreement.** This policy, when read in concert with the Joint Powers Subscriber Agreement, embodies the entirety of the agreement existing between you and us relating to this Insurance. You acknowledge that the independent insurance agent responsible for maintaining information about your insurance needs has no power to bind ICRMP to provide insurance coverage beyond that expressed in this Policy and its attendant Declarations.
12. **Fraudulent Claims.** If you make any **claim** knowing the same to be false or fraudulent, as regards amount or otherwise, this Policy shall become void and all **claims** hereunder shall be forfeited.
13. **Inspections, Audit and Verification of Values.** We shall be permitted, but not obligated, to review or inspect your property, operations, records, and books, at any reasonable time. Neither our right to make inspections or conduct reviews, nor the making thereof, nor any report thereon, shall constitute an undertaking on behalf of or for the benefit of you or others, to determine or warrant that such property or operations are safe or the accuracy of the values stated by you in your application. It is solely your responsibility to disclose accurate statements of value.
14. **Loss Payments.** When it has been determined that we are liable under this Policy, we shall pay losses in excess of the Deductible up to the Limits of Coverage stated in the Declarations. Our obligation to make loss payments shall not arise until the amount thereof has been finally determined.
15. **Mitigation.** In the event of a loss covered under this Policy, you must take all reasonable steps to prevent further loss or damage.
16. **No Benefit to Bailee.** We will not recognize any assignment or grant any coverage for the benefit of any person, entity, or organization holding, storing or transporting your property, regardless of any other provision of this Policy.
17. **Non-stacking of Insurance Benefits.** No individual or entity entitled to coverage under any section of this Policy shall recover duplicate coverages for the same elements of loss under other sections of this Policy, or other policies written by us. Any claim which transcends more than one policy period shall be subject to the Policy limits set forth in the Declaration of the Policy which covers the date of the earliest actionable event, which gives rise to the claim.
18. **Notice of Member contribution or Coverage Changes.**
- a. We will mail or deliver to the **named insured**, at the last known mailing address, written notice of the following at least thirty (30) days prior to the expiration date of this Policy:
- (1) A total member contribution increase greater than ten percent (10%) which is the result of a comparable increase in member contribution rates.
 - (2) Changes in Deductibles.
 - (3) Reductions in Limits.
 - (4) Reductions in Coverage.
- b. If we fail to provide such thirty (30) day notice, the coverage provided to you shall remain in effect until thirty (30) days after such notice is given or until the effective date of replacement coverages obtained by you, whichever occurs first.
- c. For purposes of this provision, notice is considered given thirty (30) days following date of mailing or delivery of the notice to the **named insured**. Proof of mailing of notice of cancellation to the last known mailing address of the **named insured** shall be sufficient proof of notice.

19. **Other Insurance.** If you have other insurance (whether primary, excess or contingent), against loss covered by this Insurance, we shall be liable, under the terms of this Insurance, only as excess of other valid and collectible insurance. Notwithstanding the foregoing, you may purchase insurance specifically in excess of this Insurance. Such excess insurance shall not be considered "other insurance" for purposes of this condition.
20. **Reporting Property on Your Schedule of Values.** Coverage is conditioned upon information being entered into the ICRMP e-Agent system by your agent. It is the responsibility of the independent insurance agent to enter information into the ICRMP e-Agent system. It is the responsibility of you to report the required information to your agent.
21. **Salvage.** Payments received from the sale of your damaged property as salvage will be applied toward the amount we have paid to replace your damaged property.
22. **Subrogation/Recovery/Right of Reimbursement.** If we make payment under this Policy to you or on your behalf, and you or the person or entity for whom payment was made has a right to recover **damages**, we will be subrogated to that right. You must do whatever is necessary to enable us to exercise our rights and must do nothing after the loss to prejudice our rights. We may prosecute an action or pursue other lawful proceedings in your name for the recovery of these payments, and you must cooperate and assist us at our request. Recoveries made on your behalf must first be applied to amounts we have paid on your behalf including both indemnity payments and expenses we have incurred in handling your claim.
23. **Suit Against Us.** No action shall be brought against us by you unless there has been full compliance with all pertinent provisions of this Policy. No one shall have any right to join us as a party to any action against an **insured**. No action may be brought against us by a non-insured with respect to any liability coverages.
24. **Terms of Policy to Conform to Statutes.** In the event any terms of this Policy are determined to be in conflict with the statutes of the State of Idaho, they are hereby amended to conform to such statutes.
25. **Territory.** The insurance provided by this policy and its extensions and endorsements applies to occurrences only within the fifty (50) states of the United States of America, the District of Columbia, the United States Virgin Islands and Puerto Rico.

GENERAL EXCLUSIONS

Unless otherwise stated, these exclusions are applicable to ALL Sections of this Policy.

1. **Civil and Criminal Penalties.** This Policy does not cover any *claim*, loss or damage resulting from any civil and criminal penalties imposed or provided for pursuant to any federal, state, or local law, statute, ordinance, or regulation, however characterized.
2. **Claims by Members against Past or Present Public Officials.** This policy does not cover the interest of any past or present employee, elected official, or agent arising out of any claim for money *damages*, monetary reimbursement or specific performance brought against such employee, elected official or agent by the Member political subdivision by whom the public official, employee, elected official or agent was employed or retained. Also excluded are those claims brought by an elected official, or by one appointed to fill an elected position for a *named insured* against another official of the same *named insured*, or the *named insured* itself, arising out of a dispute or interpretation involving the relative governmental authority of the elected officials of the *named insured*.
3. **Contractual Liability.** This Policy does not cover any *personal injury*, *property damage*, or any other claimed loss, however characterized, arising directly or indirectly from the performance or nonperformance of terms of a contract, whether written, oral or implied, excepting, however, employment contract *claims* premised upon implied contracts pursuant to Section IV (Errors & Omissions).

This Policy does not provide coverage for the interests of the State of Idaho or the United States Government, or their officers, agents, *employees*, volunteers, officials or trustees, for their conduct and activities arising out of or in any way related to any written, oral or implied contract or agreement with you, or otherwise. Each governmental entity shall be responsible for its own conduct and activities under any covered contract.

This Policy does provide coverage with respect to Section II, Coverage C (Law Enforcement Liability) of this Policy, for liability assumed by written intrastate mutual law enforcement assistance agreements between political subdivisions in accordance with the terms and conditions of that coverage.

4. **Course and Scope.** This Policy does not cover any *personal injury* or *property damage* resulting from an act or omission outside the course and scope of employment or any act performed with malice or criminal intent. This exclusion applies regardless of whether any *insured* is actually charged with, or convicted of, a crime.
5. **Nuclear Incident.** This Policy does not cover any *personal injury*, *property damage*, or other *claims* arising directly or indirectly from nuclear reaction, radiation, or radioactive contamination, however caused or characterized, including any loss or damage by fire resulting therefrom.
6. **Punitive Damages.** This Policy does not cover any *claim*, loss or damage for exemplary or punitive *damages*, however characterized.
7. **War or Civil Disturbance.** This Policy does not cover any *claim*, loss or damage arising directly or indirectly from, by, happening through or in consequence of war, invasion, acts of foreign enemies, any weapon of war employing atomic fission or radioactive force (whether in time of peace or war), hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority unless such acts of destruction by order of civil authority are at the time of and for the purpose of preventing spread of fire; or *claims* or liability arising directly or indirectly from nuclear fission, nuclear fusion or radioactive contamination.
8. **Intergovernmental claims.** This policy does not cover any claim, loss or damage, arising or in any way related to a dispute or disagreement between an ICRMP member and another governmental entity, including another political subdivision, a state or the government of the United States about the use or authority to use governmental powers wherein there has been no *accident* or allegation of actual *bodily injury*.

9. **Pollution.** This Policy does not cover any injury, loss, damage, costs, fines, penalties, or expenses of any kind directly or indirectly arising out of the actual, alleged or threatened existence, discharge, dispersal, release or escape of pollutants or negligence resulting therefrom:

- a. At or from premises you now, or in the past, have owned, rented, or occupied, including but not limited to premises that you have operated or managed as an involuntary possessor.
- b. At or from any site or location used by or for you or others for the handling, storage, disposal, processing or treatment of waste at any time.
- c. Which are at any time involving the transportation, handling, storage, treatment, disposal, or processing by or for you or any person or organization for whom you may be legally responsible.
- d. At or from any site or location on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations:
 - (1) If the pollutants are brought on or to the site or location in connection with such operations.
 - (2) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the pollutants.
- e. Whether caused or alleged to have been caused by the **named insured** or any other person, entity, or third-party, however characterized.

In addition, this Policy does not cover any loss, costs, expenses, fines, or penalties arising out of any direction, request, or order of any governmental agency, court of law, or other authority, that you test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants, including any and all costs or attorney's fees associated therewith.

This policy does not cover **claims** arising out of the failure of the **named insured** to prevent or regulate pollutants generated or caused by any other person, entity, or third-party, however characterized.

Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, metals and waste. Waste includes materials to be recycled, reconditioned or reclaimed. This exclusion shall not apply to tear gas or mace.

This is an absolute pollution exclusion. It is the intention of you and we that there is absolutely no coverage arising out of or relating to pollutants, however characterized or defined.

SECTION I - PROPERTY INSURANCE

Property Insuring Agreements

COVERAGE A. Buildings, Structures, and Personal Property. We agree, subject to the terms and conditions of this Coverage, to pay you, or on your behalf, for direct accidental physical loss of or direct accidental physical damage to your **covered property**, during the Policy Period.

COVERAGE B. Mobile Equipment and Automobile Physical Damage. We agree, subject to the terms and conditions of this Coverage, to pay you, or on your behalf, for direct accidental physical loss of or direct accidental physical damage to any **automobile or mobile equipment** owned by the **named insured**; or any **automobile or mobile equipment** for which the **named insured** has an obligation to provide adequate insurance during the Policy Period.

COVERAGE C. Operational Disruption Expense. We agree, subject to the terms and conditions of this Coverage, to pay you, or on your behalf, costs incurred by you in order to continue as nearly as practicable the normal operation of your public entity immediately following damage to **covered property** arising out of a covered loss during the **period of restoration** under Coverage A of Section I of this Policy during the Policy Period. This includes the loss, if any, of income, net of expenses, incurred during the **period of restoration** of the operation of the public entity.

COVERAGE D. Valuable Papers and Records. We agree, subject to the terms and conditions of this Coverage, to pay you, or on your behalf, for direct accidental physical loss of or direct accidental physical damage to valuable papers and electronic records following damage to **covered property** arising out of a covered loss under Coverage A of Section I of this Policy during the Policy Period. You may extend this coverage to apply to the costs to research, replace, or restore records which exist on electronic or magnetic media for which duplicates do not exist.

Definitions Applicable to Property Insuring Agreements

The following definitions are applicable to the Property Insuring Agreements of this Policy:

1. "**Actual cash value**" means the cost of replacing damaged or destroyed property with comparable new property, minus depreciation and obsolescence.
2. "**Aircraft**" means any machine capable of sustained atmospheric flight.
3. "**Automobile**" means a motorized land vehicle, trailer or semi-trailer principally licensed and designed for travel on public roads. "**Automobile**" does not include "**mobile equipment**".
4. "**Covered Property**" means your buildings and structures, building contents, leasehold improvements, buildings and structures in the course of construction, personal property, **automobiles** and **mobile equipment** listed on the **Schedule of Values**. It also means personal property and **mobile equipment** of others that are in your care, custody or control, leased buildings and structures, but only for the portion which you occupy and in which you have an insurable interest at the time of the loss listed on the **Schedule of Values**. Items placed on the **Schedule of Values** will not be covered if excluded elsewhere by this policy.
5. "**Earthquake**" means **earthquake**, volcanic eruption, subterranean fire, landslide, subsidence, earth sinking and earth rising or shifting or any such convulsion of nature. If more than one **earthquake** shock shall occur within any period of seventy-two (72) hours during the term of this Coverage, such **earthquake** shock shall be deemed to be a single **earthquake** within the meaning hereof.
6. "**Flood**" means the rising, overflowing or breaking of boundaries of rivers, lakes, streams, ponds or similar natural or man-made bodies of water.

7. **"Functional Replacement Cost"** means the cost of replacing damaged property with similar property that will perform the same function but may not be identical to the damaged property.
8. **"Mobile Equipment"** means equipment that is on wheels or tracks and is not licensed or principally designed for travel on public roads and is self-propelled or specifically designed to be attached to or pulled by a vehicle and identified in your **Schedule of Values**. **Mobile Equipment** also includes watercraft fifty (50) feet and under in length.
9. **"Period of Restoration"** means that period of time that begins with the date of the direct physical loss of or direct physical damage to **covered property** and ends with the date when such part of the **covered property** as has been lost or damaged could, with the exercise of due diligence or dispatch, be rebuilt, or replaced.
10. **"Replacement Cost"** means the cost to repair, rebuild or replace with new materials of like kind, size and quality, without deduction for depreciation.
11. **"Schedule of Values"** means those values identifying **covered property** as entered into the ICRMP e-Agent database by the member's agent and kept on file with us.

Specific Conditions Applicable to Property Insuring Agreements

The following conditions are applicable to the Property Insuring Agreements of this Policy.

1. **Appraisal.** If you and we fail to agree on the amount of loss, either one can demand that the amount of loss be set by appraisal. If either makes a written demand for appraisal, each shall select a competent, independent appraiser, and notify the other of the appraiser's identity within twenty-one (21) days of receipt of the written demand. The two appraisers shall then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within fourteen (14) days, you or we can ask a district judge in the State of Idaho to select an umpire. The appraisers shall then set the amount of the loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within fourteen (14) days, they shall submit their differences to the umpire. Written agreements signed by any two of these three shall set the amount of the loss within seven (7) days. Any such decision resulting from the appraisal process shall be final and binding upon you and us, and shall not be subject to judicial review or appeal, except upon a showing of fraud, misrepresentation or other undue means. Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire shall be shared equally by you and us.
2. **Architects' Fees.** Architects' fees are limited to seven percent (7%) to a maximum of \$250,000 per occurrence whichever is smaller.
3. **Automobiles and Mobile Equipment that is leased or rented.**
 - a. **Automobiles** that are leased or rented to an **insured**, for less than ninety (90) days, and used for official business, are covered under the last clause under Coverage B, Mobile Equipment and Automobile Physical Damage and are not required to be listed on the **Schedule of Values**.
 - b. **Mobile Equipment** that is leased or rented to an **insured**, for less than ninety (90) days, and used for official business, is covered under Coverage B, Mobile Equipment and Automobile Physical Damage and is not required to be listed on the **Schedule of Values**.
4. **Automobiles Owned by Employees or Authorized Volunteers.** **Automobiles** owned by employees or authorized volunteers of the **named insured** are provided secondary physical damage coverage while the **automobiles** are being used by the employee or authorized volunteers on official business of the **named insured**. Coverage provided by this condition shall be deemed secondary to the coverage of the employee or authorized volunteers' personal insurance, which shall be primary insurance. The intent of this special condition shall not be interpreted to extend coverage to **automobiles** owned by other public or private entities, which are made available to the **named insured** or its **employees**. For these non-owned **automobiles**, the terms and conditions already contained in the Policy shall apply.

- a. This Specific Condition does not apply to **automobiles** or **mobile equipment** owned by authorized volunteers engaged in search and rescue activities. These coverages are intended to be primary insurance for search and rescue volunteers only when actively participating in search and rescue mobilizations initiated by the **named insured**.
5. **Civil Authority.** Property which is **insured** under this Coverage is also covered against damage or destruction by civil authority during a conflagration and for the purpose of retarding the same; provided that neither such conflagration nor such damage or destruction is caused or contributed to by war, invasion, revolution, rebellion, insurrection or other hostilities or warlike operations.
6. **Disaster or Emergency Relief Assistance.** Any coverage provided by this Section shall be secondary to any financial assistance, funds, resources, or benefits available to you for disaster or emergency relief assistance from federal or state sources, however characterized. You must undertake and complete all actions and procedures necessary to receive any disaster or emergency relief assistance applicable to your loss, or receive written notice that no assistance will be given, before we are obligated to pay any sums pursuant to this Section.
7. **Debris Removal.** This Coverage covers up to 25% of the amount of **property damage** loss otherwise payable for any one "occurrence" under Coverage Part A for the expenses of removing debris remaining after any loss thereby **insured** against, except that there shall be no liability for the expense of removal of any foundations.
8. **Newly Acquired Property:** All newly acquired property shall be reported to us within (90) days in order for coverage to continue. Newly acquired property shall be valued in accordance with the criteria established in the Valuation of Loss condition below.
9. **Operational Disruption Expense.** We shall not be liable for any **Operational Disruption Expense** exceeding the **period of restoration**. We will pay up to \$1,000,000 for any one occurrence or in the aggregate for multiple occurrences under this policy.
10. **Ordinance Deficiency.** In the event of a covered loss, we shall be liable for additional cost not to exceed \$5,000,000 occasioned by the enforcement of any state or municipal law, ordinance or code, which necessitates repairing, rebuilding, or replacement of **covered property** to meet such requirements, provided such repairing, rebuilding or replacement is 1.) complete, or 2.) commences and is continuing within twenty-four (24) months of the date of loss. If demolition is required to comply with such requirement, we shall be liable for such additional costs, except as provided in the debris removal provision above. The provisions of these conditions shall not, in any event, apply to increased costs due to the enforcement of compliance with pollution statutes, ordinances or laws, whether local, state or federal in nature.
11. **Preservation of Property.** If it is necessary to move covered personal property from the described premises to preserve it from loss or damage, we will pay up to \$25,000 for direct physical loss or damage to that property while it is being moved or while temporarily stored at another location. We shall be liable for reasonable expenses incurred to minimize **insured** loss, but any payment under this provision shall not serve to increase the Limits of Coverage that would otherwise apply at the time and place of loss, nor shall such expenses exceed the amount by which the loss is reduced.
12. **Property in the Course of Construction.** New construction of buildings, including equipment, machinery, tools, materials or supplies intended for use in the construction of such property shall be covered up to \$100,000 for each building as listed per the **Schedule of Values**. Repairs or renovations of existing buildings or structures listed on the **Schedule of Values** and that you have an insurable interest in at the time of loss shall be covered up to \$1,000,000.
13. **Schedule of Values.** **Covered property** need not be identified in the **Schedule of Values** if the individual value of the item is less than \$5,000. It is your responsibility, working with your independent insurance agent, to make sure all **covered property** valued over \$5,000 is listed on your **Schedule of Values**. We will pay up to 50% of the repair or **functional replacement cost**, whichever is less, for items inadvertently omitted on your **Schedule of Values** up to a per occurrence limit and annual aggregate limit of \$1,000,000.

14. **Valuable Papers and Records.** The maximum amount we will pay under Coverage D of this policy section or any one occurrence or in the aggregate for multiple occurrences is \$100,000.

15. **Valuation of Loss.**

a. Building and structures— We shall not be liable for loss or damage in excess of 125% of the total values per location as reported in the **Schedule of Values**, which you have submitted to us in accordance with the conditions described below:

(1) If property damaged or destroyed is not repaired, rebuilt or replaced on the same or another site within two (2) years after the loss or damage, we shall not be liable for more than the **actual cash value** as of the date of loss (ascertained with proper deduction for depreciation) of the property destroyed.

(2) Our total liability under this Coverage for loss of property covered herein shall not exceed the least of the following:

(a) The cost to repair; or

(b) The cost to rebuild or replace, calculated as of the date of the loss, on the same site, with materials that are functionally equivalent as defined in **functional replacement cost**; or

(c) The actual expenditure incurred in rebuilding, repairing or replacing on the same or another site.

b. Building Contents — at **replacement cost** of the damaged or destroyed **covered property**.

c. **Automobile and Mobile Equipment** —not to exceed the amount listed on the **Schedule of Values** or at **functional replacement cost**, whichever is less, up to a maximum of \$1,000,000.

d. Stock in process — at the value of raw material and labor expended plus the proper proportion of overhead charges.

e. Finished goods manufactured by you — at the regular cash-selling price at the location where the loss occurs, less all discounts and charges to which the property would have been subject had no loss occurred.

f. Property of others — (1) at the amount for which you are liable, but in no event to exceed the **replacement cost** value or (2) fine arts on display at the appraised value and included as contents or listed separately on the **Schedule of Values**.

g. Leased buildings, leasehold improvements and betterments — at **replacement cost**, if actually replaced within two (2) years after the loss or damage; if not so replaced, at **actual cash value** on date of loss.

h. Accounts, manuscripts, mechanical drawings and other records and documents not specifically excluded — at value plus cost of transcribing.

i. Fine arts — at the appraised value of the article to a maximum of \$500,000 per occurrence or in the aggregate for multiple occurrences.

Exclusions Applicable to Property Insuring Agreements

A. **Excluded Losses.** We do not cover losses under the Property Insuring Agreements resulting directly or indirectly from:

1. **With Regard to all Property:**

a. Loss or damage more specifically covered under any other Section of this Policy.

- b. Moth, vermin, termites, or other insects; inherent vice; latent defect; wear, tear or gradual deterioration; and contamination, rust, wet or dry rot, mold, dampness of atmosphere, smog or extremes of temperature.
- c. Settling, shrinkage or expansion of building or foundation, unless caused by **earthquake** or **flood**.
- d. Loss of use, delay, loss of markets or opportunity.
- e. Breakdown or derangement of any machinery, unless an insured peril ensues, and then only for the actual loss or damage caused by such ensuing peril.
- f. Smog, acid rain, dampness of atmosphere or variations of temperature.
- g. Electrical appliances, devices, fixtures or wiring caused by artificially generated electrical current, unless fire or explosion ensues, and then only for the actual loss or damage caused by such ensuing fire or explosion.
- h. Inventory shortage, mysterious disappearance or loss resulting from any kind of infidelity, dishonesty by you or any of your **employees**, whether alone or in collusion with others.
- i. An act or omission intended or reasonably expected from the standpoint of any **insured** to cause **property damage**. This exclusion applies even if the **property damage** is of a different kind or degree than that intended or reasonably expected.
- j. Any fraudulent, dishonest, or criminal act by any **employee** or authorized representative of the **named insured** while acting alone or in collusion with others.
- k. Theft, attempted theft, water damage, building glass breakage, sprinkler leakage, vandalism, and any other loss or damage to a building or its contents which has been vacant for more than ninety (90) consecutive days, including the date of the loss.
- l. **Fungi**. This policy does not cover any **claim** made under Section 1 – Property Insurance arising directly or indirectly from fungi including **claims** for the cost to clean up, remove, remediate, or test for the presence or effects of fungi. Fungi means any form of fungi including but not limited to, yeast, mold, mildew, rust, smut, mushroom, spores, mycotoxins, or any other substances, odors, or byproducts arising out of the current or past presence of fungi.

2. With Regard to Buildings and Structures:

- a. Cracking, bulging, expansion of pavements, foundations, walls, floors, ceilings or roofs, unless one or more of the walls or roofs of the building or structure is physically broken and falls to a lower level. This exclusion shall not apply if caused by **earthquake** or **flood**. If, however, direct loss by liquids or gases not otherwise excluded, or collapse results, then this Policy shall cover only the resulting loss.
- b. Extremes or changes of temperature (except to water piping or space heating equipment due to freezing) or changes in relative humidity, regardless of whether or not atmospheric.
- c. Any increase of loss due to interference with rebuilding, repairing, or replacing a building, or with the resumption or continuation of business.
- d. Any increase of loss due to the suspension, lapse or cancellation of any lease or license, contract or order.

3. With Regard to Property in Course of Construction:

- a. Loss or damage to property caused by or resulting from errors in design or testing of that property, except resultant physical loss or damage to other property insured by this Coverage.

- b. The repair or replacement of faulty or defective workmanship, material, or construction, except resultant physical loss or damage to other property insured by this Coverage.
- c. Penalties for non-completion of or delay in completion of contract or non-compliance with contract conditions, nor for loss of use of occupancy, however caused.

4. With Regard to Personal Property:

- a. Shrinkage, evaporation, loss of weight, leakage, depletion, erosion, marring, scratching, exposure to light or change in color, texture or flavor. This exclusion shall not apply if such loss or damage is caused directly by fire or by the combating thereof, lightning, wind storm, hail, explosion, strike, riot or civil commotion, **aircraft**, vehicles, breakage of pipes or apparatus, sprinkler leakage, vandalism and malicious mischief, and theft or attempted theft.
- b. Mechanical derangement, inherent vice, or latent defect.
- c. Processing, renovating, repairing or faulty workmanship, unless fire or explosion ensues, and then only for direct loss or damage caused by such ensuing fire or explosion.

B. Excluded Property. We do not cover physical loss or physical damage to the following property:

1. All animals and birds, except service animals that are identified on your **Schedule of Values**. For those identified service animals, our liability for such loss shall not exceed the amount listed in the **Schedule of Values** or \$10,000, whichever is less, for injury, sickness or death.
2. Land and water, except water which is normally contained within type of tank, piping system or other process equipment.
3. **Aircraft**.
4. Watercraft over fifty (50) feet in length.
5. Standing timber, trees, lawns, shrubs, plants and growing crops.
6. Retaining walls not constituting part of a building when loss is caused by ice or water pressure.
7. Underground mines and mining property located below the surface of the ground.
8. Any property undergoing insulation breakdown tests.
9. Money, notes or securities.
10. Jewelry, furs, precious metals or precious stones, other than as covered under Section V of this Policy.
11. Personal property of anyone other than the **named insured**, unless required as a condition of employment.
12. Any property located in a building which has been vacant for more than ninety (90) consecutive days, including the date of the loss.
13. Dams, canals, and ditches.
14. Roadways, highways, streets, bridges, and guardrails, however characterized.
15. Underground pipes.
16. Any **mobile equipment, automobile**, watercraft or other property while participating in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity.

SECTION II - GENERAL LIABILITY INSURANCE AND PREMISES MEDICAL PAYMENTS

General Liability and Premises Medical Payments Insuring Agreements

COVERAGE A. General Liability. We agree, subject to the terms and conditions of this Coverage, to pay on your behalf those sums which you become legally obligated to pay as **damages** for **personal injury** or **property damage** which arise out of an **occurrence** during the Policy Period.

COVERAGE B. Premises and Operations Medical Payments. We agree, subject to the terms and conditions of this Coverage, to pay **medical expenses** incurred during the Policy Period for such immediate medical and surgical relief to others, except any **insured**, as shall be necessary at the time of an **occurrence** on account of **bodily injury** sustained on premises owned or rented by you, or arising out of your operations with your knowledge and consent.

COVERAGE C. Law Enforcement Liability. We agree, subject to the terms and conditions of this Coverage, to pay on your behalf all sums which you become obligated to pay by reason of errors, omissions, or negligent acts arising out of the performance of your duties while providing law enforcement services or the administration of **first aid** resulting in **personal injury** or **property damage** during the Policy Period.

Definitions Applicable to General Liability and Premises Medical Payments Insuring Agreements

The following definitions are applicable to the General Liability and Premises Medical Payments Insuring Agreements of this Policy:

1. **"Accident"** means an unexpected happening without intention or design.
2. **"Automobile"** means a motorized land vehicle, trailer or semi-trailer principally licensed and designed for travel on public roads.
3. **"Bodily Injury"** means physical injury to any person, including death or sexual molestation, and any mental anguish or mental suffering associated with or arising from such physical injury.
4. **"Completed Operations"** means **bodily injury** or **property damage** arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the **bodily injury** or **property damage** occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the **named insured**. Operations include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:
 - a. When all operations to be performed by or on behalf of the **named insured** under the contract have been completed, or
 - b. When all operations to be performed by or on behalf of the **named insured** at the site of the operations have been completed, or
 - c. When the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

5. **"Damages"** means monetary damages awarded through judgment in a court proceeding or through settlement agreed to by us to compensate a claimant for harm suffered.

6. **"First Aid"** means the rendering of emergency medical treatment at the time of an accident and only when other licensed medical professional care is not immediately available.
7. **"Medical Expenses"** means expenses for necessary medical, surgical, x-ray and dental services, ambulance, hospital, professional nursing and funeral services.
8. **"Mobile Equipment"** means equipment that is on wheels or tracks and is not licensed or principally designed for travel on public roads and is self-propelled or specifically designed to be attached to or pulled by a vehicle.
9. **"Occurrence"** means an **accident** or a continuous or repeated exposure to conditions which result in **personal injury** or **property damage** during the Policy Period. All personal injuries to one or more persons and/or **property damage** arising out of an **accident** or a continuous or repeated exposure to conditions shall be deemed one **occurrence**. Coverage for personal injury arising out of sexual molestation shall be covered as one **occurrence** and all **damages** shall be deemed to have occurred at the time the initial act is committed whether committed by one perpetrator or two or more perpetrators acting in concert regardless of the number of incidents of sexual molestation taking place after the initial incident. **This insurance does not apply to any insured that has been found to have committed a criminal act involving sexual molestation.**
10. **"Personal Injury"** means **bodily injury**, mental anguish, shock, sickness, disease, disability, wrongful eviction, malicious prosecution, humiliation, invasion of rights of privacy, libel, slander or defamation of character, piracy and any infringement of copyright of property, erroneous service of civil papers, assault and battery and disparagement of property. As respects Coverage C only, **personal injury** shall also mean false arrest, false imprisonment, detention, unlawful discrimination and violation of civil rights arising out of law enforcement activities.
11. **"Premises"** means any real property or land possessed and controlled by the entity in its capacity as a possessor.
12. **"Property Damage"** means physical damage to or destruction of tangible property, including loss of use resulting from such physical damage or destruction.

**Specific Conditions Applicable to General Liability and
Premises Medical Payments Insuring Agreements**

The following conditions are applicable to the General Liability and Premises Medical Payments Insuring Agreements of this Policy:

1. **Completed Operations. Coverage A** of this Section includes coverage for operations or reliance upon representations or warranties made at any time with respect to such operation, but only if the damage occurs after such operation has been completed or abandoned, and occurs away from **premises** owned by or rented to the **named insured**. Operations include materials, parts, or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:
 - a. When all operations to be performed by or on behalf of the **named insured** under the contract have been completed.
 - b. When all operations to be performed by or on behalf of the **named insured** at the site of the operation have been completed.
 - c. When the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing an operation for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

2. **Hostile Fire and Fire Suppression Liability. Coverage A** of this Section includes coverage for loss or damage arising out of heat, smoke, or fumes resulting from a hostile fire, as well as liability arising out of fire suppression activities by authorized fire fighting personnel. For purposes of this specific condition, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be; provided however, all requirements of the insuring agreement of Coverage A are satisfied.
3. **Garagekeeper's Liability. Coverage A** of this Section includes coverage for the ownership and operation of storage garages and parking lots of the **named insured** as bailees with respect to an **automobile** left in their custody and control; provided however, all requirements of the insuring agreement of Coverage A are satisfied.
4. **Host/Liquor Liability. Coverage A** of this Section includes coverage for the liability resulting from the providing, sale or distribution of alcoholic beverages, or by reason of any local, state or federal liquor control laws; provided however, all requirements of the insuring agreement of Coverage A are satisfied.
5. **Incidental Medical Liability. Coverage A and Coverage C** of this Section includes coverage for professional medical services rendered in the course and scope of delivering such services or during medically supervised training thereof or which should have been rendered to any person or persons (other than **employees** of the **named insured** injured during the course of their employment) only by any of the following persons employed by or acting on behalf of the **named insured**:
 - a. Employed or volunteer Emergency Medical Technicians (EMTs), Paramedics or First Responders.
 - b. Employed or volunteer, Nurse Practitioners, Registered Nurses, Licensed Practical Nurses, or nurses otherwise licensed and regulated under the statutes of the State of Idaho, while employed by you and while acting within the scope of their duties and responsibilities, serving inmates of a jail operated by you.
 - c. Volunteer Registered Nurses, Licensed Practical Nurses, or nurses otherwise licensed and regulated under the statutes of the State of Idaho, while employed by you and while acting within the scope of their duties and responsibilities, serving as EMT, Paramedic, First Responder or Ambulance personnel.
 - d. The providing of **first aid** by a law enforcement officer, fire fighter or **employee** on the pending arrival of professional medical assistance, where the officer, fire fighter or **employee** arrives on the scene of any emergency situation where a person requires medical assistance.
6. **Multiple Insureds, Claims or Claimants.** Inclusion herein of more than one **insured** or the making of more than one **claim** or the bringing of **suits** by more than one person or organization shall not operate to increase our Limits of Coverage.
7. **Personal Injury.** In that event that Coverage A of this Section includes coverage for personal injuries to one (1) or more persons arising out of physical abuse, sexual abuse or molestation by any one (1) person, the actions by any one (1) person shall be deemed to be one (1) occurrence, irrespective of the number of claimants. In the event of an occurrence arising out of the actual, alleged or threatened physical abuse, sexual abuse or molestation involving more than one policy period, our liability under all policy periods during which the named insured has been a Member shall not exceed what it would have been in any one policy period, alone.
8. **Products Liability. Coverage A** of this Section includes coverage for liability arising out of the products or reliance upon a representation or warranty of the **named insured** made at any time with respect to such products, but only if **damages** after such physical possession of such product has been relinquished to another; provided however, all requirements of the insuring agreement of Coverage A are satisfied.
8. **Sewer Back-up Claims. Coverage A** of this Section includes coverage for third-party **claims** for **property damage** arising out of **occurrences** involving sewer line and facilities back-up and related events, for which the **named insured** is clearly responsible; provided however, all requirements of the insuring agreement of Coverage A are satisfied. This coverage extends to mold and other fungus

abatement and remediation demonstrated to be a direct result of an **occurrence** for which you are clearly responsible. Fungi means any form of fungi including but not limited to, yeast, mold, rust, smut, mushroom, spores, mycotoxins, or any other substances, odors, or byproducts arising out of the current or past presence of fungi.

Exclusions Applicable to General Liability and Premises Medical Payments Insuring Agreements

Liability Coverage under the General Liability and Premises Medical Payments Insuring Agreements does not apply:

1. To any **claim** or loss more specifically covered under any other Section of this Policy.
2. To **personal injury** or **property damage** resulting from an act or omission intended or expected from the standpoint of any **insured** to cause **personal injury** or **property damage**. This exclusion applies even if the **personal injury** or **property damage** is of a different kind or degree, or is sustained by a different person or property, than that intended or expected. This exclusion shall not apply to **personal injury** resulting from the use of reasonable force to protect persons or property, or in the performance of a duty of the **insured**.
3. To the ownership, maintenance or use, including loading and unloading, of watercraft over fifty (50) feet in length, except with respect to operations performed by independent contractors.
4. To **personal injury** or **property damage** resulting from or arising out of the ownership, maintenance, use or entrustment to others of any **automobile**.
5. To **personal injury** or **property damage** resulting from or arising out of the ownership, maintenance, use or entrustment to others of any **aircraft**, airfields, runways, hangars, buildings, or other properties in connection with aviation activities, other than **premises** liability in buildings involving aviation operations to which the general public is admitted.
6. To **property damage** to property you own, rent or occupy; **premises** you sell, give away or have abandoned; property loaned to you; and personal property in your care, custody and control. This exclusion shall not apply to garagekeeper's liability coverage, as provided in the Specific Conditions of this Section.
7. To any **claim** arising out of estimates of probable costs, or cost estimates being exceeded, or for faulty preparation of bid specifications or plans.
8. To any **damages** claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal, or disposal of your product, your work, or the impaired property if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition.
9. To any obligation for which you may be held liable under any workers' compensation, unemployment compensation, disability benefits law, employer's liability, or under any similar federal, state or local law, ordinance, rule or regulation, however characterized, as well as any **claim** or **suit** by a spouse, child, parent, or sibling of an **insured** as a consequence of **personal injury** to the **insured**.
10. To any **claim** or **suit** for which the only monetary **damages** sought are costs of **suit** and/or attorney's fees.
11. To any **claim** of liability arising out of or in any way connected with the operation of the principles of eminent domain, condemnation proceedings, inverse condemnation, annexation, regulatory takings, land use regulation, or planning and zoning activities or proceedings, however characterized, whether such liability accrues directly against you or by virtue of any agreement entered into by or on your behalf.
12. To **personal injury** or medical expense caused by the following diseases: asbestosis, mesothelioma, emphysema, pneumoconiosis, pulmonary fibrosis, pleuritis, endothelioma, or to any lung disease or

any ailment caused by, or aggravated by exposure to or inhalation, consumption or absorption of asbestos in any form.

13. To **personal injury or property damage** due to, or arising out of, the actual or alleged presence of asbestos in any form, including the costs of remedial investigations or feasibility studies, or to the costs of testing, monitoring, abatement, mitigation, cleaning, removal, or disposal of any property or substance; or **damages** arising out of any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with aforementioned; or obligations to share **damages** with or repay someone else who must pay **damages** in connection with the aforementioned.
14. To any **claim** relating to employment or wrongful termination of any person, including threatened, actual or alleged discrimination or harassment.
15. To any investigatory, disciplinary or criminal proceeding against an **insured**, except that we may at our own option, associate counsel in the defense of any such investigatory, administrative or disciplinary proceeding. Should we elect to associate counsel, such election shall not constitute a waiver or estoppel of any rights we may have pursuant to the terms, conditions, exclusions, and limitations of this Policy.
16. To any obligation of a **named insured** to make payments pursuant to Idaho Code § 6-610A, which provides for the payment of defense costs on behalf of certain **employees** of governmental entities who are named as defendants in a criminal action.
17. To any liability arising out of the rendering of or failure to render the following professional health care services:
 - a. Medical, surgical, dental, x-ray or nursing service or treatment or the furnishing of food or beverages in connection therewith; or
 - b. Any professional medical service(s) by a physician, except Supervisory Physician's as defined by Idaho Code § 6-902A (2) (b), and only when performing those duties as outlined in Idaho Code § 6-902A (2) (a).
 - c. Any professional medical service(s) by physician's assistant, or Nurse; or
 - d. Furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances; or
 - e. Handling of or performing post-mortem examination on human bodies; or
 - f. Service by any person as a member of a formal accreditation or similar professional board or committee of the **insured**, or as a person charged with the duty of executing directives of any such board or committee.

However, this exclusion shall not apply to liability of an **insured** for Incidental Medical Liability coverage, as provided in the Specific Conditions to this Section.

18. To any **claim** involving miscalculation of assessments, adjustments, disbursements or the collection of taxes, fees, licenses, however described.
19. To any liability of any **insured** arising out of the rendering of or failure to render services as an officer or director, or other official of any organization, other than the **named insured**. This exclusion does not apply if the **insured** is serving at the direction of or on behalf of the **named insured**, and is acting within the scope of their duties as such.

SECTION III – AUTOMOBILE LIABILITY INSURANCE AND AUTOMOBILE MEDICAL PAYMENTS

Automobile Liability and Automobile Medical Payments Insuring Agreements

COVERAGE A. Automobile Liability. We agree, subject to the terms and conditions of this Coverage, to pay on your behalf those sums which you become legally obligated to pay as **damages** because of **bodily injury** or **property damage** arising out of the ownership, maintenance, use, loading or unloading, of an **insured automobile**.

COVERAGE B. Automobile Medical Payments. We agree, subject to the terms and conditions of this Coverage, to pay an **insured** or on behalf of an **insured**, all reasonable **medical expenses** incurred by an **insured** for medical treatment, services, or products actually rendered as a result of or arising out of **bodily injury** caused by an **automobile accident**. The cost of treatment, services, or products must be incurred within one (1) year after the **accident** or within three (3) years if the injury has been treated within one (1) year from the date of the **accident**.

COVERAGE C. Uninsured/Underinsured Motorists. We agree, subject to the terms and conditions of this Coverage, to pay **damages** for **bodily injury** which an **insured** is legally entitled to recover from the owner or operator of an **uninsured/underinsured automobile**. The **bodily injury** must be caused by **accident** and arise out of the ownership, maintenance, or use of an **uninsured/underinsured automobile**. Any amounts payable for **damages** under this coverage will be reduced by:

1. All sums paid because of **bodily injury** by or on behalf of persons or organizations who may be legally responsible for causing the **bodily injury** and
2. All sums paid by worker's compensation benefits or similar disability law.

This policy will pay under this coverage only after the limits of liability under any applicable **bodily injury** liability policies or bonds have been used up in payments, settlements, or judgments and after all worker's compensation benefits an **employee** may be entitled to have been paid.

Definitions Applicable to Automobile Liability Insurance and Automobile Medical Payments Agreements

The following definitions are applicable to the Automobile Liability Insuring and Automobile Medical Payments Agreements of this Policy:

1. "**Accident**" means an unexpected happening without intention or design.
2. "**Automobile**" means a motorized land vehicle, trailer or semi-trailer principally licensed and designed for travel on public roads.
3. "**Bodily Injury**" means physical injury, sickness or disease, including mental anguish or death resulting therefrom.
4. "**Damages**" means monetary damages awarded through judgment in a court proceeding or through settlement agreed to by us to compensate a claimant for harm suffered
5. "**Insured**", with regard to Coverages B and C of this Section, means anyone **occupying** an **insured automobile** with the permission of the owner.
6. "**Insured Automobile**" means an **automobile** owned by the **named insured** or a non-owned **automobile** while operated by an **insured** in the course and scope of their duties or such use that is otherwise authorized by the **named insured**.

7. **"Medical Expenses"** means expenses for necessary medical, surgical, x-ray and dental services, ambulance, hospital, professional nursing and funeral services.
8. **"Mobile Equipment"** means equipment that is on wheels or tracks and is not principally licensed and designed for travel on public roads and is self propelled or specifically designed to be attached to or pulled by a vehicle.
9. **"Occupying"** with regard to Coverages "B" and "C" of this section means an individual who, at the time of the **accident** is in physical contact with an insured automobile.
10. **"Proof of Loss"** means any written demand to recover **damages** for *bodily injury* pursuant to Coverages B and C of this Section.
11. **"Property Damage"** means physical damage to or destruction of tangible property, including loss of use resulting from such physical damage or destruction.
12. **"Underinsured Automobile"** means an **automobile** for which the sum of liability limits of all applicable liability bonds or policies at the time of an **accident** is less than the Limits of Coverage applicable to Coverage C of this Section.
13. **"Uninsured Automobile"** means an **automobile**:
 - a. To which a **bodily injury** liability bond or policy does not apply at the time of the **accident**.
 - b. For which an insuring or bonding company denies coverage or has become insolvent.
 - c. Which is a hit-and-run **automobile** and neither the driver nor the owner can be identified. The hit-and-run **automobile** must come in contact with an **insured automobile**.
14. **"You"** with regard to Coverages "B" and "C" of this section means the individual seeking UM/UIM or Automobile Medical Payments under this policy and who was **occupying** an **insured automobile** with the permission of the owner.

Specific Conditions Applicable to Automobile Liability Insurance and Automobile Medical Payments Agreements

The following conditions are applicable to the Automobile Liability Insuring and Automobile Medical Payments Agreements of this Policy:

A. With respect to Coverages A, B and C:

1. **Automobiles Owned by Employees or Authorized Volunteers.** An **automobile** owned by an **employee** or authorized volunteer of the **named insured** is provided coverages afforded by this Section while the **automobile** is being used by an **employee** or authorized volunteer on official business of the **named insured**. Coverage provided by this condition shall be deemed secondary to the coverage of the **employee's** or authorized volunteer's personal insurance, which is deemed to be primary insurance. The intent of this special condition shall not be interpreted to extend coverage to an **automobile** owned by other public or private entities, which are made available to the **named insured** or its **employees**. For these non-owned **automobiles**, the terms and conditions already contained in this Policy shall apply.

This Specific Condition does not apply to volunteers engaged in search and rescue activities. These coverages are intended to be primary insurance for search and rescue volunteers only when actively participating in search and rescue mobilizations initiated by the **named insured**.

2. **Limits of Coverage.** We will not pay more than the applicable Limits of Coverage shown in the Declarations for the coverage afforded under this Section that results from any one **accident**.
3. **Non-Duplication of Benefits.** There will be no duplication of payments under the Automobile Liability, Automobile Medical Payments, and the Uninsured/Underinsured Motorist Coverages,

respectively, of this Policy. Any amounts payable under these coverages will be reduced by the amount of any advance payments.

B. With Respect to Coverage B:

1. **Examinations/Medical Reports.** The injured person may be required to take physical examinations by physicians we choose, as often as we reasonably require. We must be given authorization to obtain medical reports and other records pertinent to any such claim.
2. **Proof of Loss.** As soon as possible, any person making a claim under this Coverage must give us written **proof of loss** as described below. It must include all details we may need to determine the amounts payable.

C. With Respect to Coverage C:

1. **Proof of Loss.** A **Proof of Loss** must be served upon ICRMP as soon as practicable following any such **accident** causing the injury in order to determine the amounts payable. Failure to provide such notice shall be deemed a material and prejudicial breach of this Coverage, and render any coverage null and void. All **proof of losses** presented shall accurately describe the conduct and circumstances which brought about the injury, state the time and place the injury occurred, state the names of all persons involved, and shall contain the amount of **damages** claimed, together with any and all records that exist pertaining to said injury. Said records shall consist of 1) all police reports pertaining to the **accident** and 2) complete medical and billing records from all institutions (hospitals, rehabilitation facilities, and nursing homes) and physician offices. A signed Medical Records Release form must be provided with the **proof of loss** giving ICRMP authorization to obtain additional medical reports and other records pertinent to any such loss.
2. **Arbitration.** If we and any person entitled to recover under Coverage C fail to agree on the amount of **damages** thereof, the amount shall be settled by arbitration. In that event, each party will select an arbitrator. The two arbitrators will then select a third arbitrator. If they cannot agree upon a third arbitrator within thirty (30) days, both parties can ask a district judge in the State of Idaho to select the third arbitrator. Each party will pay the expenses it incurs, and bear the expenses of the third arbitrator equally. Written decisions of any two arbitrators will determine the issues and will be binding. The arbitration will take place pursuant to the Uniform Arbitration Act, Idaho Code Title 7, Chapter 9, unless both parties agree otherwise. Attorneys fees and fees paid to medical and other expert witnesses as part of the arbitration proceeding will not be considered arbitration expenses. These costs and expenses will be paid by the party incurring them.
3. **Prejudgment or Pre-Arbitration Award Interest.** Prejudgment or pre-arbitration award interest shall not begin to accrue until the date that the **proof of loss** is received by us.
4. **Medical Examinations.** The injured person may be required to take, at our expense, physical examinations by physicians we choose, as often as we reasonably require.
5. **Hit-and-Run Accident.** At our request, **you** shall make available for inspection any **automobile** which any **insured occupying** at the time of a hit-and-run **accident**. **You** must also notify a law enforcement agency within twenty-four (24) hours of any hit-and-run **accident**. **You** must also notify us of any such hit-and-run **accident** within seven (7) days of any such **accident**. Failure to provide such notice shall be deemed a material and prejudicial breach of this Coverage, and render any coverage null and void.
6. **Non-Binding Judgment.** No judgment resulting from a **suit** brought without our written consent, or which we are not a party to, is binding on us, either for determining the liability of the **uninsured or underinsured automobile** or owner, or the amount of **damages** sustained.
7. **Non-Stacking of Policies.** If this Policy and any other insurance policy issued to you apply to the same **accident**, the maximum limit of our liability under all the policies shall not exceed the highest applicable limit under any one policy.

**Exclusions Applicable to Automobile Liability Insurance and
Automobile Medical Payments Agreements**

Liability Coverage under the Automobile Liability and Automobile Medical Payments Insuring Agreements does not apply:

A. With respect to Coverages A, B and C:

1. To any **claim** or loss more specifically covered under any other Section of this Policy.
2. To any **bodily injury** sustained by any person, including an **insured**, engaged in the maintenance or repair of an **insured automobile**.
3. To any **claim** that directly or indirectly benefits any worker's compensation or disability benefits insurer.
4. To any **claim** arising out of the operation of **mobile equipment**.

B. With Respect to Coverage A:

1. To **bodily injury** or **property damage** resulting from an act or omission intended or reasonably expected from the standpoint of any **insured** to cause **bodily injury** or **property damage**. This exclusion applies even if the **bodily injury** or **property damage** is of a different kind or degree, or is sustained by a different person or property, than that intended or reasonably expected. This exclusion shall not apply to **bodily injury** and **property damage** resulting from the use of reasonable force to protect persons or property, or in the performance of your duties.
2. **Damages** to property rented to, used by, or in the care, custody or control of any **insured**.
3. To **bodily injury** to any **insured** arising out of or in the course of employment.
4. To any liability for indemnity or contribution brought by any party for **bodily injury** or **property damage** sustained by any **insured**.

C. With Respect to Coverage B:

1. To any **bodily injury** arising out of or resulting from the use of an **automobile** not insured by us.
2. To any **bodily injury** arising out of or resulting from the operation of an **insured automobile** while being used for hire or for a fee with authorization for such use.
3. For **bodily injury** to anyone eligible to receive benefits which are either provided, or are required to be provided, under any worker's compensation, occupational disease, or similar disability law.

D. With Respect to Coverage C:

1. To any **insured** who enters into a settlement with a third party without our written consent.
2. To any **bodily injury** resulting from or arising out of the use of an **automobile** owned by you and not insured by us.

SECTION IV - ERRORS AND OMISSIONS INSURANCE

CLAIMS MADE COVERAGE ONLY

Errors and Omissions Insuring Agreement

COVERAGE A. We agree, subject to the terms and conditions of this Coverage, to pay on your behalf all sums which you shall become legally obligated to pay as **damages** because of any **claim** which is **first made** against you during this Policy Period, arising out of any **wrongful act** by you.

All **wrongful acts**, including all related **wrongful acts**, must take place after the retroactive date, if any, shown in the Declaration Page and before the end of this Policy Period. A **claim** may also be **first made** against you if it is made during any Extended Reporting Period we may provide pursuant to the Specific Conditions outlined in this section below.

COVERAGE B. Employee Medical Insurance Benefit Liability. This coverage is for liability arising out of the negligent computation or withholding of an **employee** medical insurance benefit to which an **employee** of the **named insured** is otherwise entitled; provided, however, all requirements of the Insuring Agreement of Coverage A are satisfied.

Definitions Applicable to Errors and Omissions Insuring Agreement

The following definitions are applicable to the Errors and Omissions Insuring Agreement of this Policy:

1. **"Bodily Injury"** means physical injury to any person, including death or sexual molestation, and any mental anguish or mental suffering associated with or arising from such physical injury.
2. **"Claim"** means a demand received by you for money **damages** alleging a **wrongful act** of a tortious nature by you. No **claim** exists where the only monetary **damages** sought or demanded are costs of **suit** and/or attorney's fees. A **claim** shall include complaints filed with the Idaho Human Rights Commission (IHRC) and the Equal Employment Opportunities Commission (EEOC) subject to the exclusions set out below.
3. **"Damages"** means monetary damages awarded through judgment in a court proceeding or through settlement agreed to by us to compensate a claimant for harm suffered.
4. **"First Made"** means the earlier of the following times, but not later than the end of this Policy Period or the end of any applicable Extended Reporting period:
 - a. When you first give written notice to us that a **claim** has been made against you; or
 - b. When you first give written notice to us of specific circumstances involving a particular person or entity which may result in a **claim**. Reports of incidents or circumstances made by you to us as part of risk management or loss control services shall not be considered notice of a **claim**.
5. **"Personal Injury"** means **bodily injury**, mental anguish, shock, sickness, disease, disability, wrongful eviction, malicious prosecution, humiliation, invasion of rights of privacy, libel, slander or defamation of character, piracy and any infringement of copyright of property, erroneous service of civil papers, assault and battery and disparagement of property
6. **"Property Damage"** means physical damage to or destruction of tangible property, including loss of use.
7. **"Wrongful Act"** means the negligent performance of or failure to perform a legal duty or responsibility in a tortious manner pursuant to the Idaho Tort Claims Act or be premised upon allegations of unlawful violations of civil rights pursuant to Federal law arising out of public office or position.

Specific Conditions Applicable to Errors and Omissions Insuring Agreement

The following conditions are applicable to the Errors and Omissions Insuring Agreement of this Policy:

1. **Extended Reporting Period.** If this Policy is cancelled or not renewed for any reason, other than non-payment of member contribution or non-compliance with the terms and conditions of this Policy, you shall have the option of:
 - a. Upon payment of an additional member contribution, as determined by us, purchasing an Extended Reporting Period extending such insurance afforded by this Section, subject otherwise to its terms, exclusions and conditions, to apply to **claims** which are **first made**, within a maximum period to be agreed to by us following immediately upon the effective date of such cancellation or non-renewal, but only by reason of any **wrongful act** before such termination and otherwise covered by this Coverage; or
 - b. If you do not purchase the Extended Reporting Period, we shall extend such insurance as is afforded by this Section to apply to **claims** which are **first made** against you during the thirty (30) days following immediately upon the effective date of such cancellation or non-renewal, but only by reason of a **claim** covered under this Section, which commences and was sustained subsequent to the Retroactive Date set out in the Declarations and prior to the effective date of such cancellation or non-renewal, and which is otherwise covered by this Coverage.

If, however, this Policy is immediately succeeded by similar **claims** made insurance coverage with any insurer, in which the Retroactive Date is the same as or earlier than that shown in the Declarations, the succeeding policy shall be deemed to be a replacement of this Policy, and you shall have no right to secure an Extended Reporting Period from us.

Your right to purchase the Extended Reporting Period must be exercised by written notice to us not later than thirty (30) days after the cancellation or termination date of this Policy, and must include tender of the entire member contribution for the Extended Reporting Period. If such notice and tender is not so given, you shall not at a later date be able to exercise the right to purchase the Extended Reporting Period.

2. **Multiple Insureds, Claims or Claimants.** Inclusion herein of more than one **insured** or the making of more than one **claim** or the bringing of **suits** by more than one person or organization shall not operate to increase our Limits of Coverage.

Two or more **claims** arising out of a single **wrongful act** or series of related **wrongful acts** shall be treated as a single **claim**. All such **claims**, whenever made, shall be considered **first made** during the Policy Period, or Extended Reporting Period if purchased, in which the earliest **claim** arising out of such **wrongful act** or related **wrongful acts** was **first made** and all such **claims** shall be subject to the same Limits of Coverage.

Exclusions Applicable to Errors and Omissions Insuring Agreement

The Errors and Omissions Insuring Agreement does not cover any **claim**:

1. More specifically covered under any other Section of this Policy.
2. Arising out of any dishonest, fraudulent, criminal, malicious, deliberate or intended **wrongful act** committed by you or at your direction.
3. For **bodily injury, personal injury, or property damage**, as defined in this Section.
4. Resulting from a **wrongful act** intended or expected from the standpoint of any **insured** to cause **damages**. This exclusion applies even if the **damages** claimed are of a different kind or degree than that intended or expected.
5. Based upon or attributable to any **insured** gaining in fact any personal profit or advantage to which they were not legally entitled, including remuneration paid in violation of law.

6. Based upon or attributable to the rendering or failure to render any opinion, treatment, consultation or service, if such opinion, treatment, consultation or service was rendered or failed to have been rendered while any **insured** was engaged in any activity for which they received compensation from any source other than as a public entity or an **employee** of a public entity.
7. Arising out of estimates of probable costs, or cost estimates being exceeded, or for faulty preparation of bid specifications or plans.
8. Arising out of the failure to supply water, electrical power, fuel, or any other utilities.
9. For which you are entitled to indemnity and/or payment by reason of having given notice of any circumstances which might give rise to a **claim** under any policy or policies, the term of which has commenced prior to the inception date of this Policy, or from a **wrongful act** which occurred prior to the retroactive date set forth in the Declarations of this Policy.
10. Resulting from a continuing **wrongful act** which commences prior to the retroactive date set forth in the Declarations of this Policy.
11. Arising out of law enforcement activities or the performance of law enforcement duties.
12. To any **claim** of liability arising out of or in any way connected with the operation of the principles of eminent domain, condemnation proceedings, inverse condemnation, annexation, regulatory takings, land use regulation or planning and zoning activities or proceedings, however characterized, whether such liability accrues directly against you or by virtue of any agreement entered into by or on your behalf.
13. To any obligation of a **named insured** to make payments pursuant to Idaho Code § 6-610A, which provides for the payment of defense costs on behalf of certain **employees** of governmental entities who are named as defendants in a criminal proceeding.
14. Any **claim** for back wages or legal penalties to which the **employee** is lawfully entitled for work performed.
15. Any **claim** involving miscalculation of assessments, adjustments, disbursements or the collection of taxes, fees, licenses, however described.
16. No **claim** exists where the alleged harm for which compensation is sought derives from performance or nonperformance of terms of a contract, concerns the measure of performance or payment related to contract performance, derives from fines, penalties or administrative sanctions imposed by a governmental agency, or is generated by intergovernmental handling or allocation of funds according to the law. The **claims** for which this section provides defense and indemnification must arise out of conduct of a tortious nature or be premised upon allegations of unlawful violation of civil rights pursuant to state or federal law.
17. Arising directly or indirectly out of the failure of any investment in any **employee** benefit program, including but not limited to stocks, bonds, or mutual funds to perform as represented by an **insured**.
18. Arising directly or indirectly out of the negligence, financial failure or breach of contract by any health or **employee** benefit provider that the **named insured** contracts with to provide **employee** benefits.

SECTION V - CRIME INSURANCE

Crime Insuring Agreements

COVERAGE A. Employee Dishonesty or Fraud. We agree, subject to the terms and conditions of this Coverage, to pay the *named insured*, or on its behalf, for loss of money, securities, and other property sustained by the *named insured* resulting directly from one or more *dishonest or fraudulent acts* committed by an *employee* of the *named insured*, acting alone or in collusion with others.

COVERAGE B. Loss Inside the Premises. We agree, subject to the terms and conditions of this Coverage, to pay the *named insured*, or on its behalf, for loss of the money and securities of the *named insured* by the actual destruction, disappearance, or *wrongful taking* within the *premises*.

COVERAGE C. Loss Outside the Premises. We agree, subject to the terms and conditions of this Coverage, to pay the *named insured*, or on its behalf, for loss of the money and securities of the *named insured* by the actual destruction, disappearance, or *wrongful taking* thereof, outside the *premises* while being conveyed by a *messenger* or any armored motor vehicle company.

COVERAGE D. Money Orders and Counterfeit Paper Currency. We agree, subject to the terms and conditions of this Coverage, to pay the *named insured*, or on its behalf, for:

1. Loss sustained by the *named insured* due to the nonpayment upon presentation of any money order issued by any post office or express company which the *named insured* accepts in good faith in exchange for merchandise, money, or services.
2. Loss sustained by the *named insured* due to the good faith acceptance of the *named insured* in the regular course of business of counterfeit United States currency.

COVERAGE E. Depositor's Forgery. We agree, subject to the terms and conditions of this Coverage, to pay the *named insured*, or on its behalf, for loss which the *named insured* shall sustain through forgery or alteration of, on, or in any check, draft, promissory note, bill of exchange or similar written promise, order or direction to pay a sum certain in money made or drawn by or drawn upon the *named insured*, or made or drawn by one acting as agent of the *named insured*, or purporting to have been made or drawn as hereinbefore set forth, including:

1. Any check or draft made or drawn in the name of the *named insured* payable to a fictitious payee and endorsed in the name of such fictitious payee;
2. Any check or draft procured in a face to face transaction with the *named insured*, or with one acting as agent of the *named insured*, by anyone impersonating another and made or drawn payable to the one so impersonated and endorsed by anyone other than the one so impersonated;
3. Any payroll check, payroll draft, or payroll order made or drawn by the *named insured*, payable to bearer as well as to a named payee and endorsed by anyone other than the named payee without authority from such payee.

Definitions Applicable to Crime Insuring Agreements

The following definitions are applicable to the Crime Insuring Agreements of this Policy:

1. "**Dishonest or Fraudulent Acts**" means acts committed by an *employee* of the *named insured* which (a) cause the *named insured* to sustain such loss; and (b) results in financial benefit to the *employee* or another person or organization intended by the *employee* to receive such benefit not otherwise entitled to.
2. "**Employee**" means an officer or *employee* of the *named insured*, including elected or appointed officials, and persons acting on behalf of the *named insured* in any official capacity, temporarily or permanently in the service of the *named insured*. The term *employee* shall not mean a person or other legal entity while acting in the capacity of any broker, factor, commission merchant, consignee, contractor or other agent or representative.

3. **"Messenger"** means any *employee* who is duly authorized by the *named insured* to have the care and custody of the *insured* property outside the *premises*.
4. **"Premises"** means the interior of that portion of any building which is occupied by the *named insured* in conducting its business.
5. **"Wrongful Taking"** means an unauthorized conversion of property, whether or not proven in a court of law.

Specific Conditions Applicable to Crime Insuring Agreements

The following conditions are applicable to the Crime Insuring Agreements of this Policy:

1. **All Incidents - One Loss.** All losses incidental to an actual or attempted fraudulent, dishonest, or criminal act, or series of related acts at the *premises*, whether committed by one or more persons, shall be deemed one loss.
2. **Coverage in Lieu of Public Officials Surety Bond.** Coverage under this Section of this Policy shall be deemed to provide coverage for the terms and responsibilities of public officials or *employees* to the extent required by the Idaho Code bonding requirements for public officials.
3. **Limits of Coverage for Multiple Policy Periods/Prorata.** Payment of loss under Coverages A or E shall not reduce our liability for other losses under the same coverages, whenever sustained. Our total liability is limited to the total amount specified in the Declarations of this Policy for the following:
 - a. Under **Coverage A**, for all losses caused by any *employee* or in which such *employee* is concerned or implicated.
 - b. Under **Coverage E**, for all loss by forgery or alteration committed by any person or in which such person is concerned or implicated, whether such forgery or alteration involves one or more instruments.

Except as provided above for Coverages A and E, the applicable Limits of Coverage stated in the Declarations is the total limit of our liability with respect to all loss of property of one or more persons or organizations arising out of any one occurrence. All losses incidental to an actual or attempted fraudulent, dishonest or criminal act, or series of related acts at the *premises*, whether committed by one or more persons, shall be deemed one loss.

Regardless of the number of years this Policy shall continue in force and the number of member contributions which shall be payable or paid, the Limits of Coverage specified in the Declarations shall not be cumulative from year to year or period to period.

With respect to Coverages A and E, in the event of a loss caused by any person and which occurs partly during the Policy Period and partly during the period of the policies issued by us to the *named insured* and terminated or cancelled or allowed to expire, and in which the period for discovery has not expired at the time any such loss thereunder is discovered, our total liability under this Section and under such other policies shall not exceed, in the aggregate, the applicable Limits of Coverage on such loss or the amount available to the *named insured* under such other policies as limited by the terms and conditions thereof, for any such loss if the latter amount be the larger.

4. **Loss Caused by Unidentified Employees.** If a loss is alleged to have been caused by the fraud or dishonesty of any one or more *employees*, and the *named insured* shall be unable to designate the specific *employee* or *employees* causing such loss, the *named insured* shall nevertheless have the benefit of Coverage A, provided that the evidence submitted reasonably proves that the loss was in fact due to the fraud or dishonesty of one or more *employees* of the *named insured*.
5. **Ownership of Property/Interest Covered.** The insured property may be owned by the *named insured* or held by the *named insured* in its care, custody, or control.

6. **Recoveries.** To the extent that a loss of the **named insured** exceeds the Limits of Coverage applicable to this Section, the **named insured** shall be entitled to recoveries from third parties until the **named insured** is fully reimbursed. Any remaining recovery shall be paid to us. Audit fees incurred by us toward establishing your loss values will be deducted from the ultimate net loss.

Exclusions Applicable to Crime Insuring Agreements

Coverage under the Crime Insuring Agreements does not apply:

A. With Respect to All Coverages:

1. To any **claim** or loss more specifically covered under any other Section of this Policy.
2. To any **claim** for the potential income or increase including, but not limited to, interest and dividends, not realized by the **named insured** because of a loss covered under this Section.
3. To any **claim** for costs, fees, or other expenses incurred by the **named insured** in establishing the existence of, or amount of loss, covered under this Section.

B. With Respect to Coverage A:

1. To any loss, the proof of which, either as to its factual existence or as to its amount, is dependent upon an inventory computation or a profit and loss computation.
2. To any loss that occurs more than one year subsequent to the end of any fiscal year for which Idaho law would require an independent audit by a certified public accountant and in such year when an audit has not been conducted.
3. To any loss claimed involving conduct more than three years prior to the date of the claim or the retro date, whichever is less.

C. With Respect to Coverage B:

1. To any **claim** or loss due to any fraudulent, dishonest, or criminal act by any **employee**, director, trustee, or authorized representative of the **named insured**, while working or otherwise, and whether acting alone or in collusion with others.
2. To any **claim** or loss due to: (a) the giving or surrendering of money or securities in any exchange or purchase; (b) accounting or arithmetical errors or omissions; or (c) manuscripts, books of account, or records.
3. To any **claim** or loss of money contained in coin operated amusement devices or vending machines, unless the amount of money deposited within the device or machine is recorded by a continuous recording instrument therein.

D. With Respect to Coverage C:

1. To any **claim** or loss due to any fraudulent, dishonest, or criminal act by any **employee**, director, trustee, or authorized representative of the **named insured**, while working or otherwise, and whether acting alone or in collusion with others.
2. To any **claim** or loss due to: (a) the giving or surrendering of money or securities in any exchange or purchase; (b) accounting or arithmetical errors or omissions; or (c) manuscripts, books of account, or records.
3. To any insured **claim** or loss of the property of the **named insured** while in the custody of any armored motor vehicle company, except as excess coverage over amounts recovered or received by the **named insured** under: (a) the contract of the **named insured** with said armored motor vehicle company; (b) insurance carried by said armored motor vehicle company for the benefit of users of its services; and (c) all other insurance and indemnity in force in whatsoever form carried by or for the benefit of users of said armored motor vehicle company's service.

SECTION VI – BOILER AND MACHINERY INSURANCE

Boiler and Machinery Insuring Agreements

We agree, subject to the terms and conditions of this Coverage to pay for:

COVERAGE A. Property Damage. Direct damage to **Covered Property** caused by a **Covered Cause of Loss** as listed in the **Schedule of Values** kept on file with us.

COVERAGE B. Expediting Expenses. With respect to direct damage to **Covered Property** we will pay for the extra cost you necessarily incur to make temporary repairs and expedite the permanent repairs or replacement of the damaged property.

COVERAGE C. Business Income and Extra Expense. We will pay your actual loss of **Business Income** during the **Period of Restoration** and **Extra Expense** you necessarily incur to operate your entity during the **Period of Restoration**. We will consider the operations of your entity before the **Breakdown** and the probable experience you would have had without the **Breakdown** in determining the amount of our payment.

COVERAGE D. Spoilage Damage. We will pay for the spoilage damage to raw materials, property in process or finished products, provided conditions are met that are outlined further in this section. We will also pay any necessary expenses you incur to reduce the amount of loss under this coverage. We will pay such expenses to the extent that they do not exceed the amount of loss that otherwise would have been payable under this form.

COVERAGE E. Utility Interruption. Losses resulting from the interruption of utility services provided conditions are met that are outlined further in this section.

COVERAGE F. Newly Acquired Premises. We will automatically provide coverage at newly acquired premises you have purchased or leased. This coverage begins at the time you acquire the property and continues for a period not exceeding ninety (90) days under conditions set forth below.

COVERAGE G. Ordinance or Law. We will pay for increases in loss as necessitated by the enforcement of any laws or ordinances that are in force at the time of the **Breakdown**, which regulate the demolition, construction, repair or use of the building or structure.

COVERAGE H. Errors and Omissions. We will pay for any loss or damage, which is not otherwise payable under this coverage part solely because of any error or unintentional omission in the description or location of property as insured under this coverage part or in any subsequent amendments, any failure through error to include any premises owned or occupied by you at the inception date of this coverage part; or any error or unintentional omission by you that results in cancellation of any premises insured under this policy.

Definitions Applicable to Boiler and Machinery Insuring Agreements

The following definitions are applicable to the Boiler and Machinery Insuring Agreements of this Policy:

1. **Breakdown:**
 - a. Means the following direct physical loss that causes damage to **"Covered Equipment"** and necessitates its repair or replacement:
 - (1) Failure of pressure or vacuum equipment;
 - (2) Mechanical failure including rupture or bursting caused by centrifugal force; or
 - (3) Electrical failure including arcing;unless such loss or damage is otherwise excluded within this Coverage.
 - b. Does **not** mean or include:
 - (1) Malfunction including but not limited to adjustment, alignment, calibration, cleaning or modification;
 - (2) Defects, erasures, errors, limitations or viruses in computer equipment and programs including the inability to recognize and process any date or time or provide instructions to **"Covered Equipment"**;

- (3) Leakage at any valve, fitting, shaft seal, gland packing, joint or connection;
 - (4) Damage to any vacuum tube, gas tube, or brush;
 - (5) Damage to any structure or foundation supporting the **Covered Equipment** or any of its parts;
 - (6) The functioning of any safety or protective device; or
 - (7) The cracking of any part on an internal combustion gas turbine exposed to the products of combustion.
2. **Business Income** means the:
- a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
 - b. Continuing normal operating expenses incurred, including payroll.
3. **Business Income Actual Annual Value** means the sum of the net income and continuing normal operating expenses incurred, including payroll that would have been earned had the **Breakdown** not occurred.
4. **Business Income Estimated Annual Value** means the sum of the net income and continuing normal operating expenses incurred, including payroll as estimated by you in the most recent reported value on file with us via your agent as listed in our eAgent database.
5. **Computer Equipment** means:
- a. Your programmable electronic equipment that is used to store, retrieve and process data; and
 - b. Associated peripheral equipment that provides communication including input and output functions such as printing or auxiliary functions such as data transmission.
- It does **not** include **Data** or **Media**.
6. **Covered Cause of Loss** means a **Breakdown** to **Covered Equipment**.
7. **Covered Equipment**:
- a. Means and includes any:
 - (1) Equipment built to operate under internal pressure or vacuum other than weight of contents;
 - (2) Electrical or mechanical equipment that is used in the generation, transmission or utilization of energy;
 - (3) Communication equipment, and **Computer Equipment**; and
 - (4) Equipment in Paragraphs (1), (2) and (3) that is owned by a public or private utility and used solely to supply utility services to your premises.
 - b. Does **not** mean or include any:
 - (1) **Media**;
 - (2) Part of pressure or vacuum equipment that is not under internal pressure of its contents or internal vacuum;
 - (3) Insulating or refractory material, but not excluding the glass lining of any **Covered Equipment**;
 - (4) Non-metallic pressure or vacuum equipment, unless it is constructed and used in accordance with the American Society of Mechanical Engineers (A.S.M.E.) code or another appropriate and approved code;
 - (5) Catalyst;
 - (6) Vessels, piping and other equipment that is buried below ground and requires the excavation of materials to inspect, remove, repair or replace;
 - (7) Structure, foundation, cabinet or compartment supporting or containing the **Covered Equipment** or part of the **Covered Equipment** including penstock, draft tube or well casing;
 - (8) Vehicle, **aircraft**, self-propelled equipment or floating vessel including any **Covered Equipment** that is mounted upon or used solely with any one or more vehicle(s), **aircraft**, self-propelled equipment or floating vessel;
 - (9) Dragline, excavation, or construction equipment including any **Covered Equipment** that is mounted upon or used solely with any one or more dragline(s), excavation, or construction equipment;

- (10) Felt, wire, screen, die, extrusion plate, swing hammer, grinding disc, cutting blade, non-electrical cable, chain, belt, rope, clutch plate, brake pad, non-metal part or any part or tool subject to periodic replacement;
- (11) Machine or apparatus used solely for research, diagnosis, medication, surgical, therapeutic, dental or pathological purposes including any **Covered Equipment** that is mounted upon or used solely with any one or more machine(s) or apparatus unless Diagnostic Equipment is shown as INCLUDED in the Declarations; or
- (12) Equipment or any part of such equipment manufactured by you for sale.
8. **Covered Property** means any property that:
- You own; or
 - Is in your care, custody or control and for which you are legally liable.
9. **Data** means:
- Programmed and recorded material stored on **Media**; and
 - Programming records used for electronic data processing, or electronically controlled equipment.
10. **Extra Expense** means the additional cost you incur to operate your business during the **Period of Restoration** over and above the cost that you normally would have incurred to operate the business during the same period had no **Breakdown** occurred.
11. **Hazardous Substance** means any substance other than ammonia that has been declared to be hazardous to health by a government agency.
12. **Media** means electronic data processing or storage media such as films, tapes, discs, drums or cells.
13. **One Breakdown** means if an initial **Breakdown** causes other **Breakdowns**, all will be considered **One Breakdown**. All **Breakdowns** at any one premises that manifest themselves at the same time and are the direct result of the same cause will be considered **One Breakdown**.
14. **Period of Restoration** means the period of time that:
- Begins at the time of the **Breakdown** or 24 hours before we receive notice of **Breakdown** whichever is later; and
 - Ends 5 consecutive days after the date when the damaged property at the premises described in the Declarations is repaired or replaced with reasonable speed and similar quality.
15. **Stock** means merchandise held in storage or for sale, raw materials, property in process or finished products including supplies used in their packing or shipping.

Specific Conditions Applicable to Boiler and Machinery Insuring Agreements

The following conditions are applicable to the Boiler and Machinery Insuring Agreements of this Policy:

- With Respect to Coverage C – Business Income and Extra Expense:**
 - Damaged Media or Damaged Data.** If **Media** is damaged or **Data** is lost or corrupted, we will pay your actual loss of **Business Income** and/or **Extra Expense** during the time necessary to:
 - Research, replace or restore the damaged **Media** or lost or corrupted **Data**; and
 - Reprogram instructions used in any covered **Computer Equipment**.
 - There shall be no coverage for any **Media** or **Data** that we determine is not or cannot be replaced or restored.
 - We will pay the lesser of your actual loss of **Business Income** and/or **Extra Expense** up to 30 days after the **Period of Restoration** or \$25,000.
- With Respect to Coverage D – Spoilage Damage:**
 - The raw materials, property in process or finished products must be in storage or in the course of being manufactured;

- b. You must own or be legally liable under written contract for the raw materials, property in process or finished products; and
- c. The spoilage damage must be due to the lack or excess of power, light, heat, steam or refrigeration.

3. **With Respect to Coverage E – Utility Interruption:**

- a. The interruption is the direct result of a **Breakdown** to **Covered Equipment** owned, operated or controlled by the local private or public utility or distributor that directly generates, transmits, distributes or provides utility services which you receive;
- b. The **Covered Equipment** is used to supply electric power, communication services, air conditioning, heating, gas, sewer, water or steam to your premises; and
- c. The interruption of utility service to your premises lasts at least the consecutive period of time of twenty-four (24) hours. Once this waiting period is met, coverage will commence at the initial time of the interruption and will be subject to all applicable deductibles

4. **With Respect to Coverage F – Newly Acquired Premises:**

- a. You must inform us, in writing, of the newly acquired premises as soon as practicable;
- b. The coverage for these premises will be subject to the same terms, conditions, exclusions and limitations as other insured premises; and

5. **With Respect to Coverage G – Ordinance or Law:**

a. **We will pay for:**

- (1) The loss in value of the undamaged portion of the building or structure as a consequence of enforcement of an ordinance or law that requires the demolition of undamaged parts of the same building or structure;
- (2) Your actual cost to demolish and clear the site of the undamaged parts of the same building or structure as a consequence of enforcement of an ordinance or law that requires the demolition of such undamaged property; and
- (3) The increased cost actually and necessarily expended to:
 - (a.) Repair or reconstruct the damaged or destroyed portions of the building or structure; and
 - (b.) Reconstruct or remodel the undamaged portion of that building or structure with buildings or structures of like materials, height, floor area, and style for like occupancy, whether or not demolition is required on:
 - (i) The same premises or on another premises if you so elect. However if you rebuild at another premises, the most we will pay is the increased cost of construction that we would have paid to rebuild at the same premises; or
 - (ii) Another premise if the relocation is required by the ordinance or law. The most we will pay is the increased cost of construction at the new premises.

b. **We will not pay for:**

- (1) Demolition or site clearing until the undamaged portions of the buildings or structures are actually demolished;
- (2) Increase in loss until the damaged or destroyed buildings or structures are actually rebuilt or replaced and approved by the regulating government agency;

(3) Loss due to any ordinance or law that:

- a. You were required to comply with before the loss, even if the building was undamaged; and
- b. You failed to comply with;

(4) Increase in the loss, excess of the amount required to meet the minimum requirement of any ordinance or law enforcement at the time of the **Breakdown**; or

(5) Increase in loss resulting from a substance declared to be hazardous to health or environment by any government agency.

c. If.

(1) The building or structure is damaged by a **Breakdown** that is covered under this policy;

(2) There is other physical damage that is not covered under this policy; and

(3) The building damage in its entirety results in enforcement of ordinance or law;

then we will not pay the full amount of the loss under this coverage. Instead, we will pay only that proportion of such loss; meaning the proportion that the covered **Breakdown** loss bears to the total physical damage.

But if the building or structure sustains direct physical damage that is not covered under this policy and such damage is the subject of the ordinance or law, then there is no Ordinance or Law coverage under this coverage part even if the building has also sustained damage by a covered **Breakdown**.

6. With Respect to Coverage H – Errors and Omissions:

No coverage is provided as a result of any error or unintentional omission by you in the reporting of values or the coverage you requested.

It is a condition of this coverage that such errors or unintentional omissions shall be reported and corrected when discovered. The policy premium will be adjusted accordingly to reflect the date the premises should have been added had no error or omission occurred.

Exclusions Applicable to Boiler and Machinery Insuring Agreements

We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. The exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

1. **Ordinance or Law.** Increase in loss from the enforcement of any ordinance, law, rule, regulation or ruling which restricts or regulates the repair, replacement, alteration, use, operation, construction, installation, clean-up or disposal of **Covered Property**. However the words use and operation shall be eliminated as respects a covered **Breakdown** to electrical supply and emergency generating equipment located on the premises of a Hospital.

2. **Earth Movement.** Earth movement, including but not limited to **earthquake**, landslide, land subsidence, mine subsidence or volcanic action.

3. **Water:**

- a. **Flood**, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- b. Mudflow or mudslide;
- c. Water damage caused by backup of sewer, drains or drainage piping; or

- d. Water damage caused by the discharge or leakage of a sprinkler system or domestic water piping.
4. **Nuclear Hazard.** Nuclear reaction or radiation, or radioactive contamination, however caused.
5. **War or Military Action:**
 - a. War, including undeclared or civil war;
 - b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
 - c. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.
6. **An explosion.** However, we will pay for direct loss or damage caused by an explosion of **Covered Equipment** of a kind specified in a. through g. below, if not otherwise excluded in this Section:
 - a. Steam boiler;
 - b. Electric steam generator;
 - c. Steam piping;
 - d. Steam turbine;
 - e. Steam engine;
 - f. Gas turbine; or
 - g. Moving or rotating machinery when such explosion is caused by centrifugal force or mechanical breakdown.
7. **Fire or combustion explosion including those that:**
 - a. Result in a **Breakdown**;
 - b. Occur at the same time as a **Breakdown**; or
 - c. Ensue from a **Breakdown**.
8. Explosion within the furnace of a chemical recovery type boiler or within the passage from the furnace to the atmosphere..
9. Damage to **Covered Equipment** undergoing a pressure or electrical test.
10. Water or other means used to extinguish a fire, even when the attempt is unsuccessful.
11. Depletion, deterioration, corrosion, erosion, or wear and tear. However, if a **Breakdown** occurs, we will pay the resulting loss or damage.
12. A **Breakdown** that is caused by any of the following causes of loss if coverage for that cause of loss is provided by another policy of insurance you have, whether collectible or not:
 - a. **Aircraft** or vehicles;
 - b. Freezing caused by cold weather;
 - c. Lightning;
 - d. Sinkhole collapse;
 - e. Smoke;
 - f. Riot, civil commotion or vandalism; or
 - g. Weight of snow, ice or sleet.
13. A **Breakdown** that is caused by Windstorm or Hail.
14. A delay in, or an interruption of any business, manufacturing or processing activity except as provided by the Business Income and Extra Expense, and Utility Interruption coverages.
15. With respect to Business Income and Extra Expense, and Utility Interruption coverages, the following additional exclusions shall apply:
 - a. The business that would not or could not have been carried on if the **Breakdown** had not occurred;
 - b. Your failure to use due diligence and dispatch and all reasonable means to operate your business as nearly normal as practicable at the premises shown in the **Schedule of Values**; or

- c. The suspension, lapse or cancellation of a contract following a **Breakdown** extending beyond the time business could have resumed if the contract had not lapsed, been suspended or canceled.
16. Lack or excess of power, light, heat, steam or refrigeration except as provided by the Business Income and Extra Expense, Spoilage Damage and Utility Interruption coverages.
 17. With respect to Utility Interruption coverage, any loss resulting from the following additional causes of loss whether or not coverage for that cause of loss is provided by another policy you have:
 - a. Acts of sabotage;
 - b. Collapse;
 - c. Deliberate act(s) of load shedding by the supplying utility;
 - d. Freezing caused by cold weather;
 - e. Impact of **aircraft**, missile or vehicle;
 - f. Impact of objects falling from an **aircraft** or missile;
 - g. Lightning;
 - h. Riot, civil commotion or vandalism;
 - i. Sinkhole collapse;
 - j. Smoke; or
 - k. Weight of snow, ice or sleet.
 18. Any indirect result of a **Breakdown to Covered Equipment** except as provided by the Business Income and Extra Expense, Spoilage Damage and Utility Interruption coverages.
 19. Neglect by you to use all reasonable means to save and preserve **Covered Property** from further damage at and after the time of the loss.
 20. **Limits of Insurance.** The most we will pay for any and all coverages for loss or damage from any **One Breakdown** is the applicable Limit of Insurance shown in the Declarations. Any payment made will not be increased if more than one **insured** is shown in the Declarations. For each coverage listed, if:
 - a. a limit is shown in the Declarations, the limit for such coverage is part of, not in addition to, the Limit per Breakdown.
 - b. A limit is shown in the Declarations, we will not pay more than the Limit of Insurance for each such coverage.
 21. For any **Covered Equipment** that is:
 - a. Used solely to supply utility services to your premises;
 - b. Owned by a public or private utility;
 - c. Not in your care, custody or control and for which you are legally liable; and
 - d. Covered under this Coverage Form.

The Limit of Insurance for Property Damage stated in the Declarations is deleted and replaced by the sum of one dollar. If you are a public or private utility, 4.b. is deleted and replaced by the following:

- b. Owned by a public or private utility other than you;
22. Unless a higher limit is shown in the Declarations, the most we will pay for direct damage as a direct result of a **Breakdown to Covered Equipment** is \$25,000 for each of the following. The limits are part of, not in addition to, the Limit of Insurance for Property Damage or Limit per Breakdown.
 - a. **Ammonia Contamination.** The spoilage to **Covered Property** contaminated by ammonia, including any salvage expense.
 - b. **Consequential Loss.** The reduction in the value of undamaged "Stock" parts of a product which becomes unmarketable. The reduction in value must be caused by a physical loss or damage to another part of the product.
 - c. **Data and Media.** Your cost to research, replace or restore damaged **Data** or **Media** including the cost to reprogram instructions used in any **Computer Equipment**.

- d. **Hazardous Substance.** Any additional expenses incurred by you for the clean-up, repair or replacement or disposal of **Covered Property** that is damaged, contaminated or polluted by a **Hazardous Substance**. As used here, additional expenses mean the additional cost incurred over and above the amount that we would have paid had no **Hazardous Substance** been involved with the loss. Ammonia is not considered to be a **Hazardous Substance** as respects this limitation. This coverage applies despite the operation of the Ordinance or Law Exclusion.
- e. **Water Damage.** The damage to **Covered Property** by water including any salvage expenses, except no coverage applies to such damage resulting from leakage of a sprinkler system or domestic water piping.

SECTION VII - CHEMICAL SPRAYING ACTIVITIES LIABILITY INSURANCE

CLAIMS MADE COVERAGE ONLY

Chemical Spraying Activities Liability, Medical Payments and Emergency Clean-Up Expense Agreements

The coverage afforded by this Section constitutes an express exception to the Absolute Pollution Exclusion set forth elsewhere in this policy. As an exception to such Exclusion, this coverage stands only to pay legally required damages for personal injury or property damage not to exceed the coverage limit stated in the policy declarations, and not in any circumstances for natural resource damage claims made pursuant to state or Federal law.

COVERAGE A. Chemical Spraying Activities Liability. We agree, subject to the terms and conditions of this Coverage, to pay on your behalf those sums which you become legally obligated to pay as **damages for personal injury or property damage** because of any **chemical spraying activities** claim which is **first made** against you during this Policy Period which arises out of an **occurrence** during this Policy Period or the Policy Period, if any, that immediately preceded the current policy period.

COVERAGE B. Medical Payments. We agree, subject to the terms and conditions of this Coverage, to pay **medical expenses** incurred by the **named insured** during the Policy Period for such immediate medical and surgical relief to others, except any **insured**, as shall be necessary at the time of an **occurrence** on account of **bodily injury**, arising out of **chemical spraying activities**, sustained on premises owned or rented by you, or upon the premises, or those adjoining, where you are authorized by law to carry out chemical spraying activities.

COVERAGE C. Emergency Clean-up Expense. We agree, subject to the terms and conditions of this Coverage, to pay the **named insured** for **emergency clean-up expenses** that are necessary, reasonable, and incurred to curtail or prevent an **occurrence**, arising out of **chemical spraying activities**, which take place during the policy period and that poses an imminent and substantial danger of **personal injury or property damage** to which this Coverage applies.

Definitions Applicable to Chemical Spraying Activities Liability, Medical Payments and Emergency Clean-Up Expense Agreements

The following definitions are applicable to the Chemical Spraying Activities Liability, Medical Payments and Emergency Clean-up Expense Agreements of this Policy include (Other specific terms are defined elsewhere in the policy) :

1. **"Accident"** means an unexpected happening without intention or design.
2. **"Bodily Injury"** means physical injury to any person, including death, and any mental anguish or mental suffering associated with or arising from such physical injury.
3. **"Chemical Spraying Activities"** means the intended dispersal of herbicides, defoliants, insecticides or pesticides or other toxic materials approved by the federal government for the eradication of undesirable plant growth, insects or rodents and the mixing, loading, storage, transportation and disposal of such materials.
4. **"Emergency Clean-up Expense"** means the expenses for removal or neutralization of contaminants, irritants, or pollution that pose an imminent and substantial danger of **personal injury** and/or **property damage**, but only those expenses incurred during the first seventy-two (72) hours following chemical spray application.

5. **"First Made"** means the earlier of the following times, but not later than the end of this Policy Period:
 - a. When you first give written notice to us that a claim has been made against you; or
 - b. When you first give written notice to us of specific circumstances involving a particular person or entity which may result in a claim. Reports of incidents or circumstances made by you to us as part of risk management or loss control services shall not be considered notice of a claim.
6. **"Medical Expense"** means expenses for necessary medical, surgical, x-ray and dental services, ambulance, hospital, professional nursing and funeral services.
7. **"Occurrence"** means an **accident** or a continuous or repeated exposure to **chemical spraying activities** which result in **personal injury or property damage** during the Policy Period. All **personal injuries** to one or more persons and/or **property damage** arising out of an **accident** or a continuous or repeated exposure to conditions shall be deemed one **occurrence**.
8. **"Personal Injury"** means **bodily injury**, mental anguish, shock, sickness, disease, disability, wrongful eviction, malicious prosecution, discrimination, humiliation, invasion of rights of privacy, libel, slander or defamation of character, piracy and any infringement of copyright of property, erroneous service of civil papers, assault and battery and disparagement of property.
9. **"Property Damage"** means physical damage to or destruction of tangible property, including loss of use resulting from such physical damage or destruction.

Specific Condition to Chemical Spraying Liability
Activities, Medical Payments and Emergency Clean-Up Expense Agreements

The following condition is applicable to the Chemical Spraying Activities Liability, Medical Payments and Emergency Clean-up Expense Agreements of this Section:

Multiple Insureds, Claims or Claimants. Inclusion herein of more than one **insured** or the making of more than one claim or the bringing of suits by more than one person or organization shall not operate to increase our Limits of Coverage. Two or more claims arising out of a single **occurrence** or series of related **occurrences** shall be treated as a single claim. All such claims, whenever made, shall be considered first made during the Policy Period, in which the earliest claim arising out of such **occurrence**, or series of related **occurrences**, was first made and all such claims shall be subject to the same Limits of Coverage. It is the intent of this policy not to extend coverage in any way beyond the liability minimum established by the Idaho Tort Claims Act.

Exclusions to Chemical Spraying Liability
Activities, Medical Payments and Emergency Clean-Up Expense Agreements

Liability Coverage under the Chemical Spraying Activities Liability, Medical Payments and Emergency Clean-up Expense Agreements does not apply:

1. To any **claim** or loss more specifically covered under any other Section of this Policy.
2. To **personal injury or property damage** resulting from an act or omission intended or expected from the standpoint of any **insured** to cause **personal injury or property damage**. This exclusion applies even if the **personal injury or property damage** is of a different kind or degree, or is sustained by a different person or property, than that intended or expected.
3. To **personal injury or property damage** resulting from an act or omission outside the course and scope of employment and any act performed with malice or criminal intent. This exclusion applies regardless of whether any **insured** is actually charged with, or convicted of, a crime.

4. To any obligation for which you may be held liable under any workers' compensation, unemployment compensation, disability benefits law, employer's liability, or under any similar federal, state or local law, ordinance, rule or regulation, however characterized, as well as any claim or suit by a spouse, child, parent, or sibling of an **insured** as a consequence of **personal injury** to the **insured**.
5. To any claim or suit for which the only monetary **damages** sought are costs of suit and/or attorney's fees.
6. To any claim based on or attributable to the rendering or failure to render any opinion, treatment, consultation or service, if such opinion, treatment, consultation or service was rendered or failed to have been rendered while you were engaged in any activity for which you received compensation from any source other than as a public entity or an employee of a public entity.
7. To any claim for which you are entitled to indemnity and/or payment by reason of having given notice of any circumstances which might give rise to a claim under any other policy or policies of insurance.
8. To **personal injury** or **property damage** arising out of **chemical spraying activities** which results from or is directly or incidentally attributable to the use of any chemical spraying product in a manner inconsistent or contrary with its product labeling, including the product label approved by any state or federal regulatory agency and any additional written materials which may accompany the product label. For purposes of this exclusion, "labeling" also includes additional sources of information (e.g., EPA Protection Standard, EPA Endangered Species Program Bulletin, state Ground Water Management Plan, company Product Use Bulletins) referenced on the product label or accompanying materials.

ENDORSEMENTS

THESE ENDORSEMENTS CHANGE THE POLICY.

PLEASE READ THEM CAREFULLY.

Upset and Overturn Endorsement

Exception to Pollution Exclusion

Notwithstanding anything to the contrary contained in the policy to which this endorsement attaches, it is hereby understood and agreed that Section III, Automobile Liability Insurance, is extended to cover "**Pollution cost or expense**" as defined and limited below. This coverage is limited to \$25,000 per occurrence and aggregate.

"**Pollution cost or expense**" means any cost or expense arising out of:

1. Any request, demand or order by or on behalf of a governmental authority demanding that the *insured* or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, pollutants.
2. Any *claim* or *suit* by or on behalf of a governmental authority demanding the *insured* or test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

"**Pollution cost or expense**" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:

1. Before the pollutants or any property in which the pollutants are contained are moved from the place where they are accepted by the *insured* for movement into or onto the covered *automobile or mobile equipment*, or
2. After the pollutants or any property in which the pollutants are contained are moved from the covered *automobile or mobile equipment* to the place where they are finally delivered, disposed of or abandoned by the *insured*.

Paragraphs a. and b. above do not apply to *accidents* that occur away from the premises owned by or rented in an Assured with the respects to pollutants not in or upon a covered *automobile or mobile equipment* if:

1. The pollutants or any property in which the pollutants are contained are *upset, overturned* or damaged as a result of the maintenance or use of a covered *automobile or mobile equipment* and
2. The discharge dispersal, seepage, migration, release or escape of the Pollutants is caused directly by such upset, overturn or damage.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

Terrorism Exclusion Endorsement

This endorsement modifies insurance provided under the ICRMP Public Entity Multi-Line policy:

For the purposes of this endorsement "Terrorism" shall mean activities against persons, organizations or property of any nature:

1. That involve the following or preparation for the following:
 - a. Use or threat of force or violence; or
 - b. Commission or threat of a dangerous act; or
 - c. Commission or threat of an act that interferes with or disrupts an electronic communication, information, or mechanical system; and

2. When all of the following apply:
 - a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
 - b. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.
 - c. The total of insured damage to all types of property in the fifty (50) states of the United States of America, the District of Columbia, the United States Virgin Islands and Puerto Rico exceeds \$25,000,000.

In determining whether the \$25,000,000 threshold is exceeded ICRMP will include all insured damage sustained by property of all persons and entities affected by the incident of Terrorism and business interruption losses sustained by owners or occupants of the damaged property. For the purposes of this provision, insured damage means damage that is covered by any insurance but for the application of any terrorism exclusions.

Multiple incidents of terrorism which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, or limitations of the "policy" to which this endorsement is attached other than as stated above.

TE (Ed. 10/02)

Includes copyrighted material of Insurance Services Office, Inc. with its permission.

Data Distortion/Corruption Endorsement

Notwithstanding anything to the contrary contained in the policy to which this endorsement attaches, it is hereby understood and agreed that Section II, Property Insurance, is amended as follows:

ICRMP will not pay for Damage or Consequential loss directly or indirectly caused by, consisting of, or arising from:

- a. Any functioning or malfunctioning of the Internet or similar facility, or of any intranet or private network or similar facility,
- b. Any corruption, destruction, distortion, erasure or other loss or damage to data, software or any kind of programming or instruction set,
- c. Loss of use or functionality whether partial or entire of data, coding program, software, any computer or computer system or other device dependent upon any microchip or embedded logic, and any ensuing inability or failure of the **Insured** to conduct business.

This endorsement shall not exclude subsequent Damage or Consequential loss, not otherwise excluded, which itself results from a Defined Peril not otherwise excluded. Defined Peril shall mean: Fire, Lightning, **Earthquake**, Explosion, Falling **Aircraft**, **Flood**, Smoke, Vehicle Impact, Windstorm or Tempest, Accidental Breakdown of an Object including Mechanical and Electrical Breakdown.

This Endorsement shall not act to increase or broaden coverage afforded by this policy.

Such Damage or Consequential Loss described in A, B, or C above, is excluded regardless of any other cause that contributed concurrently or in any other sequence.

ICRMP
Multi-Lines
Insurance Policy

This Policy of Insurance is issued by ICRMP for all Members to be effective 12:01 A.M., October 1, 2008 for one-year thereafter, unless sooner terminated, for all continuing Members pursuant to and consistent with the Joint Powers Subscribers Agreement approved by the ICRMP Board of Trustees to be effective for the fiscal year beginning at the time above stated.

ORIGINAL

Phillip J. Collaer, ISB No. 3447
ANDERSON, JULIAN & HULL LLP
C. W. Moore Plaza
250 South Fifth Street, Suite 700
P. O. Box 7426
Boise, ID 83707-7426
Telephone: (208) 344-5800
Facsimile: (208) 344-5510
E-mail: pcollaer@ajhlaw.com

NO. 260 FILED 1/20
A.M. _____ P.M. _____

DEC 18 2009

J. DAVID NAVARRO, Clerk
By PATRICIA A DWONCH
DEPUTY

Attorneys for Defendants Idaho Counties Risk Management Program, (ICRMP)

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

COUNTY OF BOISE, a political
subdivision of the State of Idaho,

Plaintiff,

vs.

IDAHO COUNTIES RISK
MANAGEMENT PROGRAM,
UNDERWRITERS (ICRMP), and DOES 1
through X,

Defendants.

CV 09 200 83

Case No. ~~CV09-94-S-BLW~~

**ANSWER TO COMPLAINT FOR
DECLARATION RELIEF**

Fee Category: I(1)(a)

Fee: \$58.00

COMES NOW, the above-entitled defendant, Idaho Counties Risk Management Program, (ICRMP), (answering defendant), by and through its attorneys of record, Anderson, Julian & Hull LLP, and answers the Plaintiff's Complaint and Demand for Jury Trial as follows:

FIRST DEFENSE

The plaintiff's Complaint fails to state a claim against this answering defendant upon which relief can be granted.

JD

SECOND DEFENSE

I.

This answering defendant denies each and every allegation of the Complaint not herein expressly and specifically admitted.

II.

Based upon information and belief, this answering defendant admits the allegations contained in ¶¶1, 2, 4, 5, 8, 9, 12, and 17 of the Complaint.

III.

This answering defendant states that ¶3 of the Complaint asserts legal conclusions to which no response is required. To the extent ¶3 states facts, those facts are denied as to this answering defendant.

IV.

With respect to the factual allegations contained in ¶6 of the Complaint, this answering defendant admits the plaintiff has utilized and fulfilled the dispute resolution process described in the ICRMP policy of insurance and, in the subscriber's agreement referenced therein. Defendant denies all other factual allegations or inferences contained in ¶6.

V.

This answering defendant states that Exhibit A to the Complaint speaks for itself and specifically denies any allegations in ¶7 which are inconsistent with the terms and provisions of Exhibit A.

VI.

This answering defendant states that the allegations contained in ¶¶10-11 of the Complaint asserts legal conclusions to which no response is required. To the

extent ¶¶10-11 states facts, those facts are denied as to this answering defendant.

VII.

With respect to the factual allegations contained in ¶13 of the Complaint, this answering defendant states that the Alamar Ranch, LLC Complaint referenced therein speaks for itself and specifically denies any allegations in ¶13 that are inconsistent with the terms and provisions of the Complaint filed by Alamar Ranch, LLC against the County of Boise in the U.S. District Court, District of Idaho.

VIII.

This answering defendant admits the allegations contained in the first sentence of ¶14 of the Complaint. Defendant further states that the policy of insurance referenced therein speaks for itself and, specifically denies any allegations in ¶14 that are inconsistent with the terms and provisions of the policy of insurance.

IX.

This answering defendant states that the Alamar Complaint referenced in ¶¶15 and 16 of the Complaint speaks for itself and specifically denies any allegations in ¶¶15 and 16 that are inconsistent with the specific terms and allegations of the Alamar Complaint referenced therein.

X.

With respect to the factual allegations contained in ¶18 of the Complaint, this answering defendant admits that, prior to filing the present litigation, the defendant utilized and completed the dispute resolution procedure outlined in the ICRMP policy of insurance and, the subscriber agreement. Defendant denies all other factual allegations or inferences contained in ¶18.

XI.

With respect to the allegations contained in ¶19 of the Complaint, this answering defendant repeats and realleges its responses to ¶¶1-18 of the Complaint as if fully set forth herein.

XII.

This answering defendant is without sufficient knowledge to admit or deny the allegations contained in ¶20 of the Complaint and, for that reason, denies the same.

XIII.

This answering defendant denies the allegations contained in ¶¶21-25 of the Complaint.

XIV.

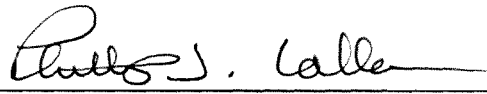
This answering defendant states that the allegations contained in ¶¶26-29 of the Complaint assert legal conclusions to which to response is required. To the extent ¶¶26-29 states facts, those facts are denied.

THIRD DEFENSE

Plaintiff's claims are barred by the virtue of terms and conditions in the ICRMP policy of insurance identified as Exhibit A to the Complaint.

DATED this 18th day of December, 2009.

ANDERSON, JULIAN & HULL LLP

By 
Phillip J. Collaer, Of the Firm
Attorneys for Defendant

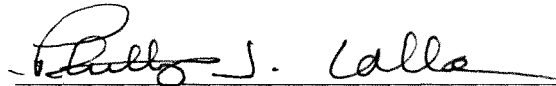
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18th day of December, 2009, I served a true and correct copy of the foregoing **ANSWER TO COMPLAINT FOR DECLARATION RELIEF** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Robert T. Wetherell,
Andrew C. Brassey
BRASSEY, WETHERELL &
CRAWFORD, LLP
203 W. Main Street
P.O. Box 1009
Boise, Idaho 83701-1009
Telephone: (208) 344-7300
Facsimile: (208) 344-7077

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile
- Electronic Delivery

Attorneys for County of Boise


Phillip J. Collaer

MAR 24 2010

J. David Alvord, Clerk
By L. AMES
DEPUTY

Robert T. Wetherell, ISB No. 3011
Megan R. Goicoechea, ISB No. 7623
BRASSEY, WETHERELL & CRAWFORD LLP
203 W. Main Street
P.O. Box 1009
Boise, Idaho 83701-1009
Telephone: (208) 344-7300
Facsimile: (208) 344-7077

Attorneys for County of Boise, a Political
Subdivision of the State of Idaho

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

COUNTY OF BOISE, a political
subdivision of the State of Idaho,

Plaintiff,

vs.

IDAHO COUNTIES RISK
MANAGEMENT PROGRAM,
UNDERWRITERS (ICRMP), and
DOES I through X,

Defendants.

Case No. CV OC 09-20083

**PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
REGARDING THE DUTY TO
DEFEND AND IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

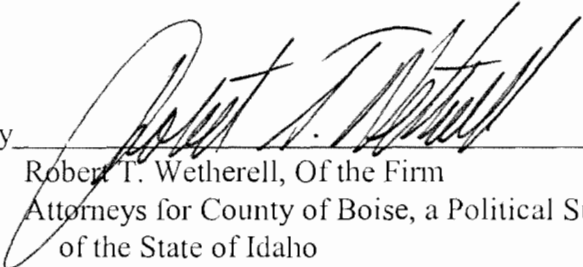
COMES NOW Plaintiff, by and through its counsel of record, Brassey, Wetherell & Crawford, and moves this Court for its Order on Plaintiff's Motion for Partial Summary Judgment Regarding the Duty to Defend and in Opposition to Defendant's Motion for Summary Judgment.

This Motion is based upon the pleadings on file herein, the Memorandum in Support, Affidavit of Robert T. Wetherell, and Affidavit of Tim McNeese, submitted herewith.

PLAINTIFF REQUESTS ORAL ARGUMENT.

DATED this 24 day of March, 2010.

BRASSEY, WETHERELL & CRAWFORD

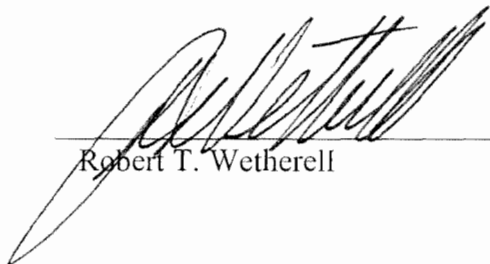
By 
Robert T. Wetherell, Of the Firm
Attorneys for County of Boise, a Political Subdivision
of the State of Idaho

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24 day of March, 2010, I served a true and correct copy of the foregoing upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Phillip J. Collaer
Anderson, Julian, & Hull
P.O. Box 7426
Boise, Idaho 83707

U.S. Mail, postage prepaid
 Hand-Delivered
 Overnight Mail
 Facsimile 344-5510


Robert T. Wetherell

2. That I am an attorney in the state of Idaho and received my license to practice law in Idaho on September 19, 1980.

3. That I was one of the attorneys working for the County of Boise, State of Idaho, at the time the Alamar decision was being made by the Idaho County Commissioners.

4. That as a public employee attorney, I am also requested to advise the County Commissioners on Planning and Zoning matters and Planning and Zoning Commissioners on such matters.

5. When the Alamar Complaint was filed in this action, I inquired of the insurance company, ICRMP, to determine if I was entitled to have an attorney represent me at my deposition, as my duties were clearly within the course and scope of employment with Boise County.

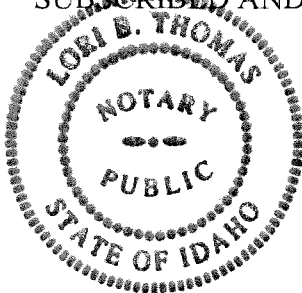
6. I was informed by ICRMP Underwriters, that because my activities "arose out of" Planning and Zoning issues, I would not be provided with an attorney to represent me at my deposition.

FURTHER YOUR AFFIANT SAITH NAUGHT.

Dated this 19th day of March, 2010.

By Timothy R McNeese
TIMOTHY R. McNEESE

SUBSCRIBED AND SWORN to before me this 19th day of March, 2010.



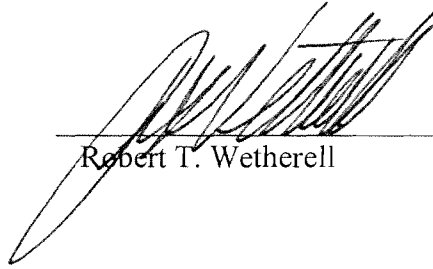
Lori Thomas
Notary Public for Idaho
Residing at Meridian
Commission expires: 5-2-14

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24 day of March, 2010, I served a true and correct copy of the foregoing upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Phillip J. Collaer
Anderson, Julian, & Hull
P.O. Box 7426
Boise, Idaho 83707

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile 344-5510



Robert T. Wetherell

1. That I am the attorney of record for the County of Boise, I am over the age of eighteen years and am a US citizen. I offer the following testimony upon personal knowledge.

2. That attached hereto as Exhibit "A" is a copy of the Complaint entitled *Alamar Ranch, LLC v. County of Boise*, Case No. 1:09-cv-00004-BLW, filed on January 8, 2009.

3. That attached hereto as Exhibit "B" is a copy of Public Entity Multi-Lines Insurance Policy for the County of Boise, policy year 2008-2009.

4. That attached hereto as Exhibit "C" is a copy of a generic Certificate Coding Guidelines sheet showing how coverage can be provided by an exception to an exclusion.

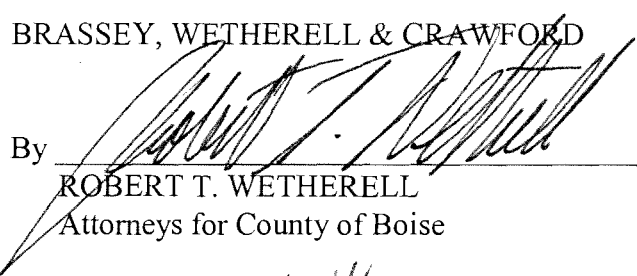
5. That attached hereto as Exhibit "D" is a copy of an article from the November/December 2009 Coverage publication entitled *CACI Int'l, Inc. v. St. Paul Fire & Marine Insurance Company - - Courts Continue to Struggle with the Boundaries of the "Eight Corners Rule."*

FURTHER YOUR AFFIANT SAITH NAUGHT.

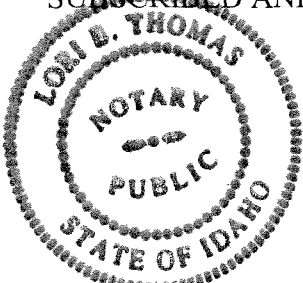
Dated this 24 day of March, 2010.

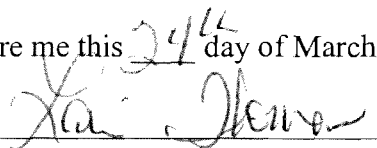
BRASSEY, WETHERELL & CRAWFORD

By


ROBERT T. WETHERELL
Attorneys for County of Boise

SUBSCRIBED AND SWORN to before me this 24th day of March, 2010.




Notary Public for Idaho

Residing at

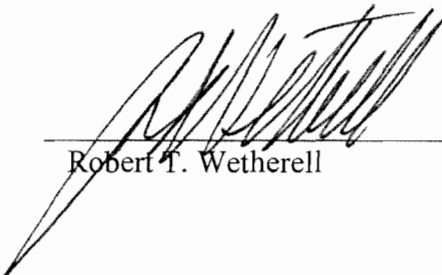
Commission expires: 5-2-14

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Phillip J. Collaer
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P.O. Box 7426
Boise, Idaho 83707

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile 344-5510



Robert T. Wetherell

EXHIBIT A

Thomas A. Banducci (ISB: 2453)
tbanducci@bwslawgroup.com
 Wade L. Woodard (ISB: 6312)
wwoodard@bwslawgroup.com
BANDUCCI WOODARD SCHWARTZMAN PLLC
 802 W. Bannock Street, Suite 500
 Boise, ID 83702
 Telephone 208.342.4411
 Facsimile 208.342.4455

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF IDAHO**

<p>ALAMAR RANCH LLC, Plaintiff, vs. COUNTY OF BOISE, Defendant.</p>	<p>Case No. COMPLAINT AND DEMAND FOR JURY TRIAL</p>
---	---

Plaintiff, Alamar Ranch, LLC ("Alamar"), by and through its counsel of record, Banducci Woodard Schwartzman, PLLC, for its complaint, alleges as follows:

PARTIES

1. Alamar is an Idaho limited liability company and the developer of a proposed residential treatment facility ("RTC") and private school that would be located on a portion of a 123-acre parcel located at 94 Klam Ranch Road, in Boise County, Idaho (the "Property").

///

2. The County of Boise ("Boise County") is a political subdivision of the State of Idaho having jurisdiction to make land use and zoning decisions in the unincorporated areas of the County of Boise, through the Board of Commissioners (the "Commission") and through the Boise County Planning and Zoning Commission ("P & Z").

JURISDICTION AND VENUE

3. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331. Venue is properly conferred on this Court pursuant to 28 U.S.C. § 1391(b) because, upon information and belief, Boise County is subject to personal jurisdiction in this District, the events took place in this District and the at-issue real property is located in this District.

GENERAL ALLEGATIONS

4. This case arises out of Boise County's violations of the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* ("FHA").

5. At all relevant times Boise County was zoned as "mixed use," meaning dissimilar uses were intended to coexist. That coexistence is sometimes ensured through the conditional use process.

6. On April 19, 2007, Alamar submitted an application to the P & Z requesting a Conditional Use Permit ("CUP") allowing Alamar to operate a 72-bed RTC and private school on the Property. The would-be residents of the proposed RTC are deemed to be "handicapped" for purposes of the FHA as they would include 12-17 year-old males suffering from mental or emotional illnesses and/or recovering from drug or alcohol abuse. Alamar was required to apply for a CUP because the RTC is identified by Boise County as a use to be reviewed by Boise County under the conditional use process. The question under the CUP process, however, is not whether this proposed use should be allowed (it is an allowed use) but whether conditions of

approval are warranted to ensure that such use does not "cause any damage, hazard, nuisance or other detriment to persons, property, or natural resources in the vicinity."

7. On August 2, 2007, Alamar presented its application to the P & Z during a public hearing. Members of the public testified for and against the application. On August 15, 2007, the P & Z once again convened to request responses from both Alamar as well as members of the public opposed to the application.

8. During both hearings the opponents of the application, consisting mostly of local residents, objected to the application on numerous discriminatory grounds. The message that was presented by these opponents in essence was "we don't want teenage alcoholics and drug addicts in our neighborhood."

9. Demonstrators against Alamar made their feelings known not only during the hearings, but also by presenting false and misleading information on their blog site (www.noalamararanch.com), illegal signs on State Highway 21, and a folk-singer rally—all designed to stir up frenzy and fear among the residents of Boise County.

10. Although Alamar satisfied its burden of demonstrating at the hearing that Alamar's project satisfied each of the nine standards in the Boise County Zoning and Development Ordinance ("BCZDO") for issuance of a CUP, the application was denied by vote of the P& Z commissioners at the conclusion of the August 15, 2007 hearing (the P & Z arrived at a 3-3 tie vote on the motion, which Boise County deemed a denial of the application).

11. On September 28, 2007, the P & Z issued a written decision denying Alamar's application. Because there was no basis within the CUP standards to deny the application, the P & Z commissioners, as a pretext, manufactured the following reasons for the denial of the application: (1) "the development of the residential treatment center was not appropriate in the

proposed location at the current time”; and (2) “the County lacked sufficient infrastructure or money to monitor and enforce the conditions that were proposed for approval of the application.” Neither rationale is among those listed in the BCZDO for denial of a CUP.

12. On October 18, 2007, Alamar timely filed a notice of appeal of the P & Z's decision to the Boise County Board of Commissioners (“Board”). In its appeal, Alamar informed Boise County that it had a duty under the FHA to approve the CUP and allow the project to be built so that housing could be made available for the “handicapped” youth that Alamar proposed to serve. In its appeal brief, Alamar requested Boise County to make reasonable accommodations to allow this housing to be built to serve “handicapped” youth.

Alamar Ranch respectfully requests that the commission (1) identify the specific provisions of Boise County's ordinance that it believed would have to be waived or varied to allow the development, (2) identify the specific aspects of the development that alleged do not comply with the ordinance, and then (3) consider whether those aspects of the code can be waived or varied to accommodate Alamar Ranch's request.

13. The Board heard the appeal at a public hearing held on January 28, 2008. The Board closed the public hearing, but did not deliberate toward a decision. Again, both at the hearing and outside of the hearing, the opposition was extremely vocal and threatening. The opposition's message was the same: “we don't want teenage alcoholics and drug addicts in our neighborhood.”

14. The Board deliberated (on the record) on March 10, 2008. The Board, knowing that it could not issue an absolute denial of the application, instead reversed the denial of the application. In doing so, however, it carried out its discriminatory purpose of preventing the project from being built by knowingly imposing numerous conditions on the CUP that individually or cumulatively made the proposed use of the property impossible. In essence, the

conditions were a pretext designed to conceal the Board's discriminatory motive of preventing the project from being built.

15. On April 21, 2008, the Board entered a written decision and order delineating several onerous, arbitrary and discriminatory conditions for the permit. Among the conditions which made the proposed use of the site impossible, were the following: (1) limiting the number of residents at Alamar to 24, (2) requiring Alamar to construct a helicopter landing pad at the site, and (3) requiring Alamar to purchase and maintain a fire suppression vehicle on the site.

16. As a result of the conditions placed on the CUP by the Board, the proposed RTC is no longer economically feasible. By itself, the condition limiting the number of residents destroyed the economic viability of the project. In essence, Boise County refused Alamar's request for reasonable accommodations by placing conditions on the CUP aimed at ensuring the project would not be economically feasible.

17. Boise County's conduct prevented the project from being developed and thereby prevented Alamar from building housing that would serve youth protected under the FHA. In so doing, Boise County has violated the FHA.

18. The would-be residents of the RTC proposed by Alamar are "handicapped" for purposes of the FHA.

19. Alamar, as the developer of housing for handicapped individuals, is an "aggrieved person" that may bring this action.

**COUNT ONE
VIOLATION OF THE FHA:
REASONABLE ACCOMMODATION**

20. The allegations included in the above paragraphs are incorporated by reference and made a part hereof.

COMPLAINT AND DEMAND FOR JURY TRIAL – PAGE 5

00093

21. As set forth above, Alamar submitted an application to develop a residential treatment center for handicapped individuals.

22. Boise County knew or reasonably should have known the application was for housing for handicapped individuals.

23. Accommodation of the handicap is necessary to afford the would-be residents an equal opportunity to use and enjoy the dwellings.

24. The accommodation requested by Alamar was reasonable.

25. Boise County refused to make the necessary accommodation by placing onerous, arbitrary and unreasonable conditions on the approval of the application which destroyed the feasibility of the project.

26. As a result of Boise County's violations of the FHA, Alamar has suffered damages in excess of the jurisdictional minimum of this Court. Alamar will establish the precise amount of damages according to proof at trial.

**COUNT TWO:
VIOLATION OF THE FHA
DISPARATE TREATMENT**

27. The allegations included in the above paragraphs are incorporated by reference and made a part hereof.

28. Alamar applied for, and was qualified to receive, a conditional use permit for the proposed RTC.

29. Boise County effectively denied the permit by placing onerous, arbitrary and unreasonable conditions on the permit.

30. Upon information and belief, Boise County has approved other developments without such conditions.

COMPLAINT AND DEMAND FOR JURY TRIAL – PAGE 6

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31. Upon information and belief, a discriminatory reason more likely than not motivated the challenged decision of Boise County.

32. As a result of Boise County's discriminatory conduct, Alamar has suffered a distinct and palpable injury. The damages suffered by Alamar are in excess of the jurisdictional minimum of this Court. Alamar will establish the precise amount of damages according to proof at trial.

**COUNT THREE:
VIOLATION OF THE FHA
PROHIBITION AGAINST INTERFERENCE**

33. The allegations included in the above paragraphs are incorporated by reference and made a part hereof.

34. The anticipated residents of the RTC described in Alamar's application are protected under the FHA.

35. Alamar aided or encouraged these would-be residents in the exercise of their rights to housing under the FHA.

36. Boise County unlawfully interfered with the exercise of those rights by obstructing the construction or availability of housing for individuals protected under the FHA. Pursuant to 42 U.S.C. § 3613(c), Alamar requests punitive damages.

37. As a result of Boise County's violations of the FHA, Alamar has suffered damages in excess of the jurisdictional minimum of this Court. Alamar will establish the precise amount of damages according to proof at trial.

REQUEST FOR PUNITIVE DAMAGES

38. Pursuant to 42 U.S.C. § 3613(c), Alamar requests punitive damages.

REQUEST FOR ATTORNEYS FEES

39. Pursuant to 42 U.S.C. § 3613(c), Alamar requests its attorneys' fees and costs.

WHEREFORE, Alamar respectfully requests this Court to enter judgment in its favor and against Boise County as follows:

- A. Awarding Alamar damages in an amount to be proven at trial;
- B. Awarding Alamar punitive damages;
- C. Awarding Alamar its reasonable costs and expenses;
- D. Awarding Alamar its reasonable attorneys' fees; and
- E. Awarding Alamar such other and further relief as the Court deems just and proper.

Dated this 8th day of January, 2008.

/s/

Thomas A. Banducci, ISB 2453
tbanducci@bwsllawgroup.com
BANDUCCI WOODARD SCHWARTZMAN PLLC
802 W. Bannock Street, Suite 500
Boise, ID 83702
Telephone 208.342.4411
Facsimile 208.342.4455

EXHIBIT B

Policy Year 2008-2009

Public Entity

Multi-Lines Insurance Policy



Boise County

Idaho Counties Risk Management Program, UNDERWRITERS

3100 Vista Ave., Suite 300, Boise, ID 83705 Phone: (208) 336-3100 Fax: (208) 336-2100



00098

PUBLIC ENTITY MULTI-LINES INSURANCE POLICY DECLARATIONS

Issued By

IDAHO COUNTIES RISK MANAGEMENT PROGRAM, UNDERWRITERS

Named Insured: **Boise County**
 Address: **PO Box 1300**
Idaho City, Idaho 83631

Policy No.: **28A01008100108**
 Policy Period: From: **October 1, 2008**
 To: **October 1, 2009**

Application Date: **August 1, 2008**
 Retroactive **November 29, 1985**
 Term: (Section IV Only)

Member **\$115,792**
 Contribution:

THE INSURANCE PROVIDED BY THIS POLICY SUPERSEDES ALL INSURANCE PREVIOUSLY AFFORDED BY ANY OTHER ICRMP POLICY.

TYPES OF COVERAGE	LIMITS OF COVERAGE	COVERAGE BASIS	DEDUCTIBLE
SECTION I - Buildings, Structures and Personal Property/Automobile Physical Damage/Operational Disruption Expense/Valuable Papers & Records			
A. Buildings, Structures and Personal Property;	Schedule of Values	Per Covered Occurrence	* The First \$1,000 of any Loss. This Deductible is applicable to Section I, Coverages A, B, C, and D.
• Architect's Fees	\$250,000	Per Covered Occurrence	
• Fine Arts	\$500,000	Per covered occurrence or in the aggregate for multiple occurrences	
• Ordinance Deficiency	\$5,000,000	Per Covered Occurrence	
• Preservation of Property	\$25,000	Per Covered Occurrence	
• Property in Course of Construction			
New	\$100,000	Per Covered Occurrence	
Repairs/Renovations of Existing	\$1,000,000	Per Covered Occurrence	
• Service Animals	\$10,000	Per Covered Occurrence	
B. Automobile/Mobile Equipment Physical Damage	\$1,000,000	Per Covered Occurrence	
C. Operational Disruption Expense	\$1,000,000	Per covered occurrence or in the aggregate for multiple occurrences.	
D. Valuable Papers and Records	\$100,000	Per covered occurrence or in the aggregate for multiple occurrences.	
Flood & Earthquake			
FLOOD	\$50,000,000	In the Aggregate Annually for all ICRMP Members Collectively.	<i>Flood High Hazard Zones:</i> \$500,000 per Building \$500,000 Personal Property
• High Hazard Zones (A&V)	\$5,000,000	In the Aggregate Annually for all ICRMP Members Collectively.	<i>Flood Moderate Hazard Zones:</i> \$100,000 per Building \$100,000 Personal Property
• Moderate Hazard Zones (B&X)	\$25,000,000	In the Aggregate Annually for all ICRMP Members Collectively.	
EARTHQUAKE	\$50,000,000	In the Aggregate Annually for all ICRMP Members Collectively.	<i>Earthquake:</i> \$100,000 of any Covered Loss

TYPES OF COVERAGE	LIMITS OF INDEMNIFICATION		LIMITS OF DEFENSE COSTS	COVERAGE BASIS	DEDUCTIBLE
SECTION II - General Liability and Premises Medical Payments Insuring Agreement A. General Liability <ul style="list-style-type: none"> • City/County Prosecutors Or Appointed City Attorneys serving as Independent contractors • Sewer Backup Mold & Fungus Abatement & Remediation B. Premises and Operations Medical Payments C. Law Enforcement Liability	For Claims Brought Pursuant to Title 6, Ch. 9, Idaho Code \$ 500,000 \$ 500,000 \$ 500,000 \$ 5,000 \$ 100,000 \$ 500,000	For All Other Claims \$3,000,000 \$ 500,000 \$ 500,000 \$ 5,000 \$ 100,000 \$3,000,000	For All Liability Claims \$2,000,000 \$2,000,000 \$2,000,000 \$2,000,000	Per Covered Occurrence Per Covered Occurrence Per Covered Occurrence Each Person Each Accident Per Covered Occurrence	• \$0.00 (no deductible) for Section II, Coverages A, B & C.
SECTION III - Automobile Liability and Automobile Medical Payments A. Automobile Liability B. Automobile Medical Payments C. Uninsured/Underinsured Motorists/No Fault	\$ 500,000 \$ 5,000 \$ 100,000 \$ 500,000	\$3,000,000 \$5,000 \$ 100,000 \$500,000	\$2,000,000 \$2,000,000 \$2,000,000	Per Covered Occurrence Each Person Each Accident Per Covered Occurrence	• \$0.00 (no deductible) for Section III, Coverages A, B & C.
SECTION IV - Errors and Omissions Insurance CLAIMS MADE COVERAGE ONLY A. Errors and Omissions <ul style="list-style-type: none"> • City/County Prosecutors Or Appointed City Attorneys serving as Independent contractors B. Employee Medical Insurance Benefit Liability	\$ 500,000 \$ 500,000 \$ 500,000	\$3,000,000 \$ 500,000 \$3,000,000	\$2,000,000 \$2,000,000 \$2,000,000	Per Covered Occurrence Per Covered Occurrence Per Covered Occurrence	• \$0.00 (no deductible) for Section IV, Coverages A & B.
\$ 5,000,000 Indemnification Limit In the Aggregate Annually For Section II, III and IV Combined \$ 3,000,000 Defense Cost Limit In the Aggregate Annually For Section II, III and IV Combined					

TYPES OF COVERAGE	LIMITS OF COVERAGE	COVERAGE BASIS	DEDUCTIBLE
SECTION V - Crime Insurance			
(Including Coverage for Public Officials in Lieu of Surety Bond Requirements)			
A. Employee Dishonesty	\$ 500,000	Per Covered Occurrence	* The First \$1,000 of any Loss. This Deductible is applicable to Section V. Coverages A, B, C, D and E.
B. Loss Inside the Premises	\$ 500,000	Per Covered Occurrence	
C. Loss Outside the Premises	\$ 500,000	Per Covered Occurrence	
D. Money Orders and Counterfeit Paper Currency	\$ 500,000	Per Covered Occurrence	
E. Depositor's Forgery	\$ 500,000	Per Covered Occurrence	
SECTION VI - Boiler and Machinery			
* The First \$1,000 of any Loss. This Deductible is applicable to Section VI, All Coverages.			
A. Damaged Property			
▪ Off-Premise Property Damage	\$ 100,000	Per Covered Occurrence	
▪ Data or Media (Property)	\$ 100,000	Per Covered Occurrence	
▪ Data or Media (Bus. Income & Extra Expense)	\$ 100,000	Per Covered Occurrence	
▪ Ammonia Contamination	\$ 1,000,000	Per Covered Occurrence	
▪ Consequential Loss	\$ 1,000,000	Per Covered Occurrence	
▪ Hazardous Substance	\$ 500,000	Per Covered Occurrence	
▪ Water Damage	\$ 2,500,000	Per Covered Occurrence	
▪ Fungus	\$ 15,000	Per Covered Occurrence	
	\$ 2,500,000	Per Covered Occurrence	
B. Expediting Expenses		Per Covered Occurrence	
C. Business Income and Extra Expense	Included in Annual Aggregate	Per Covered Occurrence	
D. Spoilage Damage	\$ 1,000,000	Per Covered Occurrence	
E. Utility Interruption	\$ 2,500,000	Per Covered Occurrence	
F. Newly Acquired Premises	\$ 5,000,000	Per Covered Occurrence	
G. Ordinance or Law	\$ 5,000,000	Per Covered Occurrence	
H. Errors and Omissions	\$10,000,000	Per Covered Occurrence	
Overall Aggregate Equipment Breakdown Limit	\$100,000,000	In the Aggregate Annually Per Covered Occurrence, Respects Section VI	

TYPES OF COVERAGE	LIMITS OF INDEMNIFICATION	LIMITS OF DEFENSE COSTS	COVERAGE BASIS	DEDUCTIBLE
SECTION VII – Chemical Spraying Activities Liability, Medical Payments & Emergency Clean-Up Expenses				
CLAIMS MADE COVERAGE ONLY				
A. Chemical Spraying Activities Liability	\$ 500,000	\$ 500,000	Per Covered occurrence and/or in the aggregate for multiple occurrences.	* The First \$0 of any Loss. This Deductible is applicable to Section VII, Coverages A, B, and C.
B. Medical Payments	\$ 5,000 \$ 10,000		Each Person Each Accident	
C. Emergency Clean-Up Expense	\$ 5,000 \$ 10,000		Each Person Each Accident	

NOTICE RE: INSURANCE GUARANTY ASSOCIATION

As required by Article 12, Section 4 of the Idaho Constitution and Idaho Code Section 41-3603(10), the ICRMP Program is not a participant in the Idaho Insurance Guaranty Association. As such, ICRMP Subscribers are not responsible for the costs of private insurer insolvencies, nor are they or claimants against them entitled to any of the protections which participation in the Guaranty Association would provide. This notice is provided in cooperation with the Idaho Insurance Guaranty Association. For additional information concerning this notice, contact the ICRMP Executive Director at 1-800-336-1985 or Doug Colwell at (208) 344-6565.

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GENERAL DEFINITIONS

Unless otherwise stated, the following definitions are applicable to all Sections and Coverages of this Policy.

"Insured" means not only the *Named Insured*, but also:

1. Any elected or appointed official serving as a volunteer or employee of the *named insured*, as well as any volunteer or employee of the *named insured* while acting within the scope of their duties as such. This does not include any appointed or elected official or employee who is serving the *named insured* as an independent contractor.
2. The Jail Standards Coordinator, when his or her performance of duties relates to a *named insured*.
3. City or County Prosecutors or appointed City Attorneys while serving as Independent Contractors in the course and scope of their statutory roles.
4. With regard to **Section III, Coverage A** (Automobile Liability), any person while using an owned *automobile* or a hired *automobile* and any person or organization legally responsible for the use thereof, provided the actual use of the *automobile* is by the *named insured* or with its permission, and any official of the *named insured* with respect to the use of non-owned *automobiles* in the business of the *named insured*.
5. With regard to **Section III, Coverage's B and C** (Automobile Medical Payments and Uninsured/Underinsured Motorist), anyone occupying an insured *automobile* with the permission of the owner.

This Policy, with respect to any person or organization other than the *named insured*, does not apply:

1. To any person or organization, or to any agent or employee thereof, operating an automobile sales agency, repair shop, service station, storage garage or public parking place, with respect to any *accident* arising out of the operation thereof.
2. To any employee with respect to injury to or sickness, disease or death of another employee of the same employer injured in the course of such employment in an *accident* arising out of the maintenance or use of the *automobile* in the business of such employer.
3. With respect to any hired *automobile*, to the owner or a lessee thereof, other than the *named insured*, nor to any agent or employee or such owner or lessee.

"Named Insured" means the public entity identified in the Declarations of this Policy.

GENERAL INSURING AGREEMENT

Idaho Counties Risk Management Program, Underwriters (ICRMP) agrees with the *insured* named in the Declarations made a part hereof, in consideration of the payment of the member contribution and in reliance upon the statement of Declarations, and subject to the Limits of Coverage, conditions, exclusions and other terms of this Policy, as follows.

Throughout this Policy, "we", "us", and "our" mean **Idaho Counties Risk Management Program, Underwriters (ICRMP)**. "You" and "your" mean the *named insured* identified in the Declarations of this Policy.

We will provide the insurance described in this Policy and Declarations if you have paid the member contribution and have complied with the Policy provisions and conditions. This Policy is divided into seven Sections, some with multiple coverages. You have only the coverages for which you have paid member contributions. These types of coverages are indicated in the Declarations and are subject to the indicated Limits of Coverage.

The liability coverages afforded by this policy to respond for *claims for damages* brought pursuant to Title 6, Chapter 9, Idaho Code (the Idaho Tort Claims Act) are expressly limited to five hundred thousand dollars (\$500,000) per occurrence. It is the express intent of ICRMP to limit exposure and coverage to the limits established by statute. Any reference to liability coverage amounts in excess of five hundred thousand dollars (\$500,000) contained in this policy shall not apply to *claims* brought pursuant to the Idaho Tort Claims Act Title 6, Chapter 9, Idaho Code.

Certain provisions in this Policy restrict coverage. The entire Policy should be read carefully to determine your rights and duties, and to determine what is and is not covered.

GENERAL CONDITIONS

Unless otherwise stated, the following conditions are applicable to ALL Sections of this Policy.

1. **Apportionment.** In the event a *suit* alleges a *claim* which is covered by the terms of this Policy and a *claim* which is not covered by the terms of this Policy, our obligation for the costs of defense and payment of any award or settlement for *damages* shall be limited to only those sums related to a covered *claim*.
2. **Assignment.** Assignment of interest under this Insurance shall not bind us unless our written consent is obtained prior to such assignment.
3. **Bankruptcy and Insolvency.** In the event of bankruptcy or insolvency of you or any entity comprising you, we shall not be relieved of the payment of any *claim* by you or against you or the liquidator, receiver or statutory successor of you under this Policy without diminution because of your insolvency.
4. **Cancellation by Withdrawing Member/Expulsion.** This insurance is cancelable by you by sending written request of cancellation to us. The effective date of the cancellation will be either the date you requested or the date we received notice, whichever is later. A notice to cancel will be treated as a Notice to Withdraw from the ICRMP program.

This insurance is available only through faithful participation as a Member of the ICRMP Program. If you are expelled from the Program, insurance coverage pursuant to this policy is terminated. You may be expelled from the Program pursuant to the terms and conditions of the JOINT POWERS SUBSCRIBER AGREEMENT effective as of the date of this Policy.

5. **Concealment or Fraud.** This Policy is void if it was obtained by misrepresentation, fraud or concealment of material facts by you or your agent before or after loss.
6. **Currency.** The member contribution and losses under this Insurance are payable in currency of the United States.
7. **Declarations.** By acceptance of this Policy you agree that the Declarations accurately indicate the coverages you have purchased.
8. **Defense of Claims or Suit.** We may investigate or settle any covered *claim* or *suit* against you. We will provide a defense with counsel of our choice, at our expense, if you are sued for a covered *claim*.
 - a. With respect to claims or suits involving Section II – General Liability Insurance and Premises Medical Payments, Section III – Automobile Liability Insurance and Automobile Medical Payments and Section IV – Errors and Omissions Insurance, our defense costs incurred will not exceed \$2,000,000 per covered claim, subject to \$3,000,000 in the aggregate for Sections II, III, and IV combined for all covered claims that are subject to this Policy's policy period. The "per covered claim" defense costs amount is the most we will incur regardless whether one or more of Sections II, III and IV are involved in a single claim, and is in addition to the Limits of Indemnification shown in the Declarations. Our obligation to defend any *claim* or *suit* ends when either:
 - (1.) The amount of loss or *damages* we pay equals the Limit(s) of Indemnification afforded under this Policy, or
 - (2.) The defense costs incurred by us equal \$2,000,000 per covered claim or the defense costs incurred by us equal \$3,000,000 aggregate for the policy period.
 - b. Notwithstanding the aforementioned, we will have no duty to investigate or defend any *claim*, *suit*, dispute, disagreement or other proceeding seeking relief or redress in any form other than money *damages*, including but not limited to costs, fees, or expenses which any *Insured* may become obligated to pay as a result of a consent decree, settlement, adverse judgment for

declaratory relief or injunctive relief. Such denial of investigation or defense includes, but shall not be limited to any **claim, suit**, dispute, disagreement or other proceeding:

- (1.) By or on behalf of any **Insured**, whether directly or derivatively, against:
 - (a.) Any other **Insured**; or
 - (b.) Any other federal, state or local governmental entity or politically subdivision;
- (2.) By the spouse, child, parent, brother, or sister of any **Insured** for consequential injury as a result of any injury to an **Insured**; or
- (3.) Involving any intergovernmental agreement(s) where any **Insured** is a party to the agreement(s).

9. **Dispute Resolution Procedure.** You and we agree that it is in our mutual interest to have a dispute resolution procedure in order to resolve potential disputes and disagreements as to whether or not a claim is covered by the terms and conditions of this Policy. You and we agree that the dispute resolution procedure as set out in the JOINT POWERS SUBSCRIBER AGREEMENT currently in force as of the date of this Policy shall apply to resolve any potential disputes and disagreements as to coverage

a. Inapplicable to Certain Disputes and Disagreements.

- (1) These dispute resolution procedures do not apply to the Appraisal condition set forth in the Specific Conditions Applicable to the Property Insuring Agreements in, Section I of this Policy, or the Arbitration condition set forth in the Specific Conditions Applicable to the Automobile Insuring Agreements set out in, Section III of this Policy.
- (2) These Dispute Resolution Procedures do not apply in any way to our decisions regarding claim settlement, claim payment or nonpayment, or the claim investigation process.

10. **Duties After Occurrence, Claim or Suit.**

a. You must see to it that we are notified as soon as practicable of an occurrence which may reasonably result in a **claim**. To the extent possible, notice should include:

- (1) How, when and where the occurrence, **claim** or **suit** took place.
- (2) The names, addresses and telephone numbers of any injured persons and witnesses.
- (3) The nature and location of any injury or damage arising out of the occurrence, **claim** or **suit**.

b. If a **claim** is made or **suit** is brought against any **insured**, you and any involved **insured** must:

- (1) Immediately send us copies of any **claims**, demands, notices, summonses or legal papers received in connection with the **claim** or **suit**.
- (2) See that we receive written notice of the **claim** or **suit** as soon as practicable.
- (3) Authorize us to obtain records and other information, and submit to a sworn statement, if requested.
- (4) Cooperate with us in the investigation, or defense of the **claim** or **suit**, including but not limited to, attendance at hearings and trials, securing and giving evidence, and obtaining the attendance of witnesses.
- (5) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to you because of injury or damage to which this Insurance may also apply.

- c. You shall not, except at your own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for **first aid**, without our consent.
- d. Your failure to comply with the foregoing duties shall constitute a material breach deemed prejudicial to us, thereby entitling us to refuse any coverage for the occurrence, **claim** or **suit**, or any duties arising therefrom.
11. **Entire Agreement.** This policy, when read in concert with the Joint Powers Subscriber Agreement, embodies the entirety of the agreement existing between you and us relating to this Insurance. You acknowledge that the independent insurance agent responsible for maintaining information about your insurance needs has no power to bind ICRMP to provide insurance coverage beyond that expressed in this Policy and its attendant Declarations.
12. **Fraudulent Claims.** If you make any **claim** knowing the same to be false or fraudulent, as regards amount or otherwise, this Policy shall become void and all **claims** hereunder shall be forfeited.
13. **Inspections, Audit and Verification of Values.** We shall be permitted, but not obligated, to review or inspect your property, operations, records, and books, at any reasonable time. Neither our right to make inspections or conduct reviews, nor the making thereof, nor any report thereon, shall constitute an undertaking on behalf of or for the benefit of you or others, to determine or warrant that such property or operations are safe or the accuracy of the values stated by you in your application. It is solely your responsibility to disclose accurate statements of value.
14. **Loss Payments.** When it has been determined that we are liable under this Policy, we shall pay losses in excess of the Deductible up to the Limits of Coverage stated in the Declarations. Our obligation to make loss payments shall not arise until the amount thereof has been finally determined.
15. **Mitigation.** In the event of a loss covered under this Policy, you must take all reasonable steps to prevent further loss or damage.
16. **No Benefit to Bailee.** We will not recognize any assignment or grant any coverage for the benefit of any person, entity, or organization holding, storing or transporting your property, regardless of any other provision of this Policy.
17. **Non-stacking of Insurance Benefits.** No individual or entity entitled to coverage under any section of this Policy shall recover duplicate coverages for the same elements of loss under other sections of this Policy, or other policies written by us. Any claim which transcends more than one policy period shall be subject to the Policy limits set forth in the Declaration of the Policy which covers the date of the earliest actionable event, which gives rise to the claim.
18. **Notice of Member contribution or Coverage Changes.**
- a. We will mail or deliver to the **named insured**, at the last known mailing address, written notice of the following at least thirty (30) days prior to the expiration date of this Policy:
- (1) A total member contribution increase greater than ten percent (10%) which is the result of a comparable increase in member contribution rates.
 - (2) Changes in Deductibles.
 - (3) Reductions in Limits.
 - (4) Reductions in Coverage.
- b. If we fail to provide such thirty (30) day notice, the coverage provided to you shall remain in effect until thirty (30) days after such notice is given or until the effective date of replacement coverages obtained by you, whichever occurs first.
- c. For purposes of this provision, notice is considered given thirty (30) days following date of mailing or delivery of the notice to the **named insured**. Proof of mailing of notice of cancellation to the last known mailing address of the **named insured** shall be sufficient proof of notice.

19. **Other Insurance.** If you have other insurance (whether primary, excess or contingent), against loss covered by this Insurance, we shall be liable, under the terms of this Insurance, only as excess of other valid and collectible insurance. Notwithstanding the foregoing, you may purchase insurance specifically in excess of this Insurance. Such excess insurance shall not be considered "other insurance" for purposes of this condition.
20. **Reporting Property on Your Schedule of Values.** Coverage is conditioned upon information being entered into the ICRMP e-Agent system by your agent. It is the responsibility of the independent insurance agent to enter information into the ICRMP e-Agent system. It is the responsibility of you to report the required information to your agent.
21. **Salvage.** Payments received from the sale of your damaged property as salvage will be applied toward the amount we have paid to replace your damaged property.
22. **Subrogation/Recovery/Right of Reimbursement.** If we make payment under this Policy to you or on your behalf, and you or the person or entity for whom payment was made has a right to recover **damages**, we will be subrogated to that right. You must do whatever is necessary to enable us to exercise our rights and must do nothing after the loss to prejudice our rights. We may prosecute an action or pursue other lawful proceedings in your name for the recovery of these payments, and you must cooperate and assist us at our request. Recoveries made on your behalf must first be applied to amounts we have paid on your behalf including both indemnity payments and expenses we have incurred in handling your claim.
23. **Suit Against Us.** No action shall be brought against us by you unless there has been full compliance with all pertinent provisions of this Policy. No one shall have any right to join us as a party to any action against an **insured**. No action may be brought against us by a non-insured with respect to any liability coverages.
24. **Terms of Policy to Conform to Statutes.** In the event any terms of this Policy are determined to be in conflict with the statutes of the State of Idaho, they are hereby amended to conform to such statutes.
25. **Territory.** The insurance provided by this policy and its extensions and endorsements applies to occurrences only within the fifty (50) states of the United States of America, the District of Columbia, the United States Virgin Islands and Puerto Rico.

GENERAL EXCLUSIONS

Unless otherwise stated, these exclusions are applicable to ALL Sections of this Policy.

1. **Civil and Criminal Penalties.** This Policy does not cover any *claim*, loss or damage resulting from any civil and criminal penalties imposed or provided for pursuant to any federal, state, or local law, statute, ordinance, or regulation, however characterized.
2. **Claims by Members against Past or Present Public Officials.** This policy does not cover the interest of any past or present employee, elected official, or agent arising out of any claim for money *damages*, monetary reimbursement or specific performance brought against such employee, elected official or agent by the Member political subdivision by whom the public official, employee, elected official or agent was employed or retained. Also excluded are those claims brought by an elected official, or by one appointed to fill an elected position for a *named insured* against another official of the same *named insured*, or the *named insured* itself, arising out of a dispute or interpretation involving the relative governmental authority of the elected officials of the *named insured*.
3. **Contractual Liability.** This Policy does not cover any *personal injury*, *property damage*, or any other claimed loss, however characterized, arising directly or indirectly from the performance or nonperformance of terms of a contract, whether written, oral or implied, excepting, however, employment contract *claims* premised upon implied contracts pursuant to Section IV (Errors & Omissions).

This Policy does not provide coverage for the interests of the State of Idaho or the United States Government, or their officers, agents, *employees*, volunteers, officials or trustees, for their conduct and activities arising out of or in any way related to any written, oral or implied contract or agreement with you, or otherwise. Each governmental entity shall be responsible for its own conduct and activities under any covered contract.

This Policy does provide coverage with respect to Section II, Coverage C (Law Enforcement Liability) of this Policy, for liability assumed by written intrastate mutual law enforcement assistance agreements between political subdivisions in accordance with the terms and conditions of that coverage.

4. **Course and Scope.** This Policy does not cover any *personal injury* or *property damage* resulting from an act or omission outside the course and scope of employment or any act performed with malice or criminal intent. This exclusion applies regardless of whether any *insured* is actually charged with, or convicted of, a crime.
5. **Nuclear Incident.** This Policy does not cover any *personal injury*, *property damage*, or other *claims* arising directly or indirectly from nuclear reaction, radiation, or radioactive contamination, however caused or characterized, including any loss or damage by fire resulting therefrom.
6. **Punitive Damages.** This Policy does not cover any *claim*, loss or damage for exemplary or punitive *damages*, however characterized.
7. **War or Civil Disturbance.** This Policy does not cover any *claim*, loss or damage arising directly or indirectly from, by, happening through or in consequence of war, invasion, acts of foreign enemies, any weapon of war employing atomic fission or radioactive force (whether in time of peace or war), hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority unless such acts of destruction by order of civil authority are at the time of and for the purpose of preventing spread of fire; or *claims* or liability arising directly or indirectly from nuclear fission, nuclear fusion or radioactive contamination.
8. **Intergovernmental claims.** This policy does not cover any claim, loss or damage, arising or in any way related to a dispute or disagreement between an ICRMP member and another governmental entity, including another political subdivision, a state or the government of the United States about the use or authority to use governmental powers wherein there has been no *accident* or allegation of actual *bodily injury*.

9. **Pollution.** This Policy does not cover any injury, loss, damage, costs, fines, penalties, or expenses of any kind directly or indirectly arising out of the actual, alleged or threatened existence, discharge, dispersal, release or escape of pollutants or negligence resulting therefrom:

- a. At or from premises you now, or in the past, have owned, rented, or occupied, including but not limited to premises that you have operated or managed as an involuntary possessor.
- b. At or from any site or location used by or for you or others for the handling, storage, disposal, processing or treatment of waste at any time.
- c. Which are at any time involving the transportation, handling, storage, treatment, disposal, or processing by or for you or any person or organization for whom you may be legally responsible.
- d. At or from any site or location on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations:
 - (1) If the pollutants are brought on or to the site or location in connection with such operations.
 - (2) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the pollutants.
- e. Whether caused or alleged to have been caused by the **named insured** or any other person, entity, or third-party, however characterized.

In addition, this Policy does not cover any loss, costs, expenses, fines, or penalties arising out of any direction, request, or order of any governmental agency, court of law, or other authority, that you test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants, including any and all costs or attorney's fees associated therewith.

This policy does not cover **claims** arising out of the failure of the **named insured** to prevent or regulate pollutants generated or caused by any other person, entity, or third-party, however characterized.

Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, metals and waste. Waste includes materials to be recycled, reconditioned or reclaimed. This exclusion shall not apply to tear gas or mace.

This is an absolute pollution exclusion. It is the intention of you and we that there is absolutely no coverage arising out of or relating to pollutants, however characterized or defined.

SECTION I - PROPERTY INSURANCE

Property Insuring Agreements

COVERAGE A. Buildings, Structures, and Personal Property. We agree, subject to the terms and conditions of this Coverage, to pay you, or on your behalf, for direct accidental physical loss of or direct accidental physical damage to your **covered property**, during the Policy Period.

COVERAGE B. Mobile Equipment and Automobile Physical Damage. We agree, subject to the terms and conditions of this Coverage, to pay you, or on your behalf, for direct accidental physical loss of or direct accidental physical damage to any **automobile or mobile equipment** owned by the **named insured**; or any **automobile or mobile equipment** for which the **named insured** has an obligation to provide adequate insurance during the Policy Period.

COVERAGE C. Operational Disruption Expense. We agree, subject to the terms and conditions of this Coverage, to pay you, or on your behalf, costs incurred by you in order to continue as nearly as practicable the normal operation of your public entity immediately following damage to **covered property** arising out of a covered loss during the **period of restoration** under Coverage A of Section I of this Policy during the Policy Period. This includes the loss, if any, of income, net of expenses, incurred during the **period of restoration** of the operation of the public entity.

COVERAGE D. Valuable Papers and Records. We agree, subject to the terms and conditions of this Coverage, to pay you, or on your behalf, for direct accidental physical loss of or direct accidental physical damage to valuable papers and electronic records following damage to **covered property** arising out of a covered loss under Coverage A of Section I of this Policy during the Policy Period. You may extend this coverage to apply to the costs to research, replace, or restore records which exist on electronic or magnetic media for which duplicates do not exist.

Definitions Applicable to Property Insuring Agreements

The following definitions are applicable to the Property Insuring Agreements of this Policy:

1. **"Actual cash value"** means the cost of replacing damaged or destroyed property with comparable new property, minus depreciation and obsolescence.
2. **"Aircraft"** means any machine capable of sustained atmospheric flight.
3. **"Automobile"** means a motorized land vehicle, trailer or semi-trailer principally licensed and designed for travel on public roads. **"Automobile"** does not include **"mobile equipment"**.
4. **"Covered Property"** means your buildings and structures, building contents, leasehold improvements, buildings and structures in the course of construction, personal property, **automobiles** and **mobile equipment** listed on the **Schedule of Values**. It also means personal property and **mobile equipment** of others that are in your care, custody or control, leased buildings and structures, but only for the portion which you occupy and in which you have an insurable interest at the time of the loss listed on the **Schedule of Values**. Items placed on the **Schedule of Values** will not be covered if excluded elsewhere by this policy.
5. **"Earthquake"** means **earthquake**, volcanic eruption, subterranean fire, landslide, subsidence, earth sinking and earth rising or shifting or any such convulsion of nature. If more than one **earthquake** shock shall occur within any period of seventy-two (72) hours during the term of this Coverage, such **earthquake** shock shall be deemed to be a single **earthquake** within the meaning hereof.
6. **"Flood"** means the rising, overflowing or breaking of boundaries of rivers, lakes, streams, ponds or similar natural or man-made bodies of water.

7. **"Functional Replacement Cost"** means the cost of replacing damaged property with similar property that will perform the same function but may not be identical to the damaged property.
8. **"Mobile Equipment"** means equipment that is on wheels or tracks and is not licensed or principally designed for travel on public roads and is self-propelled or specifically designed to be attached to or pulled by a vehicle and identified in your *Schedule of Values*. **Mobile Equipment** also includes watercraft fifty (50) feet and under in length.
9. **"Period of Restoration"** means that period of time that begins with the date of the direct physical loss of or direct physical damage to **covered property** and ends with the date when such part of the **covered property** as has been lost or damaged could, with the exercise of due diligence or dispatch, be rebuilt, or replaced.
10. **"Replacement Cost"** means the cost to repair, rebuild or replace with new materials of like kind, size and quality, without deduction for depreciation.
11. **"Schedule of Values"** means those values identifying **covered property** as entered into the ICRMP e-Agent database by the member's agent and kept on file with us.

Specific Conditions Applicable to Property Insuring Agreements

The following conditions are applicable to the Property Insuring Agreements of this Policy.

1. **Appraisal.** If you and we fail to agree on the amount of loss, either one can demand that the amount of loss be set by appraisal. If either makes a written demand for appraisal, each shall select a competent, independent appraiser, and notify the other of the appraiser's identity within twenty-one (21) days of receipt of the written demand. The two appraisers shall then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within fourteen (14) days, you or we can ask a district judge in the State of Idaho to select an umpire. The appraisers shall then set the amount of the loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within fourteen (14) days, they shall submit their differences to the umpire. Written agreements signed by any two of these three shall set the amount of the loss within seven (7) days. Any such decision resulting from the appraisal process shall be final and binding upon you and us, and shall not be subject to judicial review or appeal, except upon a showing of fraud, misrepresentation or other undue means. Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire shall be shared equally by you and us.
2. **Architects' Fees.** Architects' fees are limited to seven percent (7%) to a maximum of \$250,000 per occurrence whichever is smaller.
3. **Automobiles and Mobile Equipment that is leased or rented.**
 - a. **Automobiles** that are leased or rented to an **insured**, for less than ninety (90) days, and used for official business, are covered under the last clause under Coverage B, Mobile Equipment and Automobile Physical Damage and are not required to be listed on the **Schedule of Values**.
 - b. **Mobile Equipment** that is leased or rented to an **insured**, for less than ninety (90) days, and used for official business, is covered under Coverage B, Mobile Equipment and Automobile Physical Damage and is not required to be listed on the **Schedule of Values**.
4. **Automobiles Owned by Employees or Authorized Volunteers.** **Automobiles** owned by employees or authorized volunteers of the **named insured** are provided secondary physical damage coverage while the **automobiles** are being used by the employee or authorized volunteers on official business of the **named insured**. Coverage provided by this condition shall be deemed secondary to the coverage of the employee or authorized volunteers' personal insurance, which shall be primary insurance. The intent of this special condition shall not be interpreted to extend coverage to **automobiles** owned by other public or private entities, which are made available to the **named insured** or its **employees**. For these non-owned **automobiles**, the terms and conditions already contained in the Policy shall apply.

- a. This Specific Condition does not apply to **automobiles** or **mobile equipment** owned by authorized volunteers engaged in search and rescue activities. These coverages are intended to be primary insurance for search and rescue volunteers only when actively participating in search and rescue mobilizations initiated by the **named insured**.
5. **Civil Authority.** Property which is **insured** under this Coverage is also covered against damage or destruction by civil authority during a conflagration and for the purpose of retarding the same; provided that neither such conflagration nor such damage or destruction is caused or contributed to by war, invasion, revolution, rebellion, insurrection or other hostilities or warlike operations.
 6. **Disaster or Emergency Relief Assistance.** Any coverage provided by this Section shall be secondary to any financial assistance, funds, resources, or benefits available to you for disaster or emergency relief assistance from federal or state sources, however characterized. You must undertake and complete all actions and procedures necessary to receive any disaster or emergency relief assistance applicable to your loss, or receive written notice that no assistance will be given, before we are obligated to pay any sums pursuant to this Section.
 7. **Debris Removal.** This Coverage covers up to 25% of the amount of **property damage** loss otherwise payable for any one "occurrence" under Coverage Part A for the expenses of removing debris remaining after any loss thereby **insured** against, except that there shall be no liability for the expense of removal of any foundations.
 8. **Newly Acquired Property:** All newly acquired property shall be reported to us within (90) days in order for coverage to continue. Newly acquired property shall be valued in accordance with the criteria established in the Valuation of Loss condition below.
 9. **Operational Disruption Expense.** We shall not be liable for any **Operational Disruption Expense** exceeding the **period of restoration**. We will pay up to \$1,000,000 for any one occurrence or in the aggregate for multiple occurrences under this policy.
 10. **Ordinance Deficiency.** In the event of a covered loss, we shall be liable for additional cost not to exceed \$5,000,000 occasioned by the enforcement of any state or municipal law, ordinance or code, which necessitates repairing, rebuilding, or replacement of **covered property** to meet such requirements, provided such repairing, rebuilding or replacement is 1.) complete, or 2.) commences and is continuing within twenty-four (24) months of the date of loss. If demolition is required to comply with such requirement, we shall be liable for such additional costs, except as provided in the debris removal provision above. The provisions of these conditions shall not, in any event, apply to increased costs due to the enforcement of compliance with pollution statutes, ordinances or laws, whether local, state or federal in nature.
 11. **Preservation of Property.** If it is necessary to move covered personal property from the described premises to preserve it from loss or damage, we will pay up to \$25,000 for direct physical loss or damage to that property while it is being moved or while temporarily stored at another location. We shall be liable for reasonable expenses incurred to minimize **insured** loss, but any payment under this provision shall not serve to increase the Limits of Coverage that would otherwise apply at the time and place of loss, nor shall such expenses exceed the amount by which the loss is reduced.
 12. **Property in the Course of Construction.** New construction of buildings, including equipment, machinery, tools, materials or supplies intended for use in the construction of such property shall be covered up to \$100,000 for each building as listed per the **Schedule of Values**. Repairs or renovations of existing buildings or structures listed on the **Schedule of Values** and that you have an insurable interest in at the time of loss shall be covered up to \$1,000,000.
 13. **Schedule of Values.** **Covered property** need not be identified in the **Schedule of Values** if the individual value of the item is less than \$5,000. It is your responsibility, working with your independent insurance agent, to make sure all **covered property** valued over \$5,000 is listed on your **Schedule of Values**. We will pay up to 50% of the repair or **functional replacement cost**, whichever is less, for items inadvertently omitted on **your Schedule of Values** up to a per occurrence limit and annual aggregate limit of \$1,000,000.

14. **Valuable Papers and Records.** The maximum amount we will pay under Coverage D of this policy section or any one occurrence or in the aggregate for multiple occurrences is \$100,000.

15. **Valuation of Loss.**

- a. Building and structures— We shall not be liable for loss or damage in excess of 125% of the total values per location as reported in the **Schedule of Values**, which you have submitted to us in accordance with the conditions described below:
- (1) If property damaged or destroyed is not repaired, rebuilt or replaced on the same or another site within two (2) years after the loss or damage, we shall not be liable for more than the **actual cash value** as of the date of loss (ascertained with proper deduction for depreciation) of the property destroyed.
- (2) Our total liability under this Coverage for loss of property covered herein shall not exceed the least of the following:
- (a) The cost to repair; or
- (b) The cost to rebuild or replace, calculated as of the date of the loss, on the same site, with materials that are functionally equivalent as defined in **functional replacement cost**; or
- (c) The actual expenditure incurred in rebuilding, repairing or replacing on the same or another site.
- b. Building Contents -- at **replacement cost** of the damaged or destroyed **covered property**.
- c. **Automobile and Mobile Equipment** --not to exceed the amount listed on the **Schedule of Values** or at **functional replacement cost**, whichever is less, up to a maximum of \$1,000,000.
- d. Stock in process -- at the value of raw material and labor expended plus the proper proportion of overhead charges.
- e. Finished goods manufactured by you -- at the regular cash-selling price at the location where the loss occurs, less all discounts and charges to which the property would have been subject had no loss occurred.
- f. Property of others -- (1) at the amount for which you are liable, but in no event to exceed the **replacement cost** value or (2) fine arts on display at the appraised value and included as contents or listed separately on the **Schedule of Values**.
- g. Leased buildings, leasehold improvements and betterments -- at **replacement cost**, if actually replaced within two (2) years after the loss or damage; if not so replaced, at **actual cash value** on date of loss.
- h. Accounts, manuscripts, mechanical drawings and other records and documents not specifically excluded -- at value plus cost of transcribing.
- i. Fine arts -- at the appraised value of the article to a maximum of \$500,000 per occurrence or in the aggregate for multiple occurrences.

Exclusions Applicable to Property Insuring Agreements

A. **Excluded Losses.** We do not cover losses under the Property Insuring Agreements resulting directly or indirectly from:

1. **With Regard to all Property:**

- a. Loss or damage more specifically covered under any other Section of this Policy.

- b. Moth, vermin, termites, or other insects; inherent vice; latent defect; wear, tear or gradual deterioration; and contamination, rust, wet or dry rot, mold, dampness of atmosphere, smog or extremes of temperature.
- c. Settling, shrinkage or expansion of building or foundation, unless caused by **earthquake** or **flood**.
- d. Loss of use, delay, loss of markets or opportunity.
- e. Breakdown or derangement of any machinery, unless an insured peril ensues, and then only for the actual loss or damage caused by such ensuing peril.
- f. Smog, acid rain, dampness of atmosphere or variations of temperature.
- g. Electrical appliances, devices, fixtures or wiring caused by artificially generated electrical current, unless fire or explosion ensues, and then only for the actual loss or damage caused by such ensuing fire or explosion.
- h. Inventory shortage, mysterious disappearance or loss resulting from any kind of infidelity, dishonesty by you or any of your **employees**, whether alone or in collusion with others.
- i. An act or omission intended or reasonably expected from the standpoint of any **insured** to cause **property damage**. This exclusion applies even if the **property damage** is of a different kind or degree than that intended or reasonably expected.
- j. Any fraudulent, dishonest, or criminal act by any **employee** or authorized representative of the **named insured** while acting alone or in collusion with others.
- k. Theft, attempted theft, water damage, building glass breakage, sprinkler leakage, vandalism, and any other loss or damage to a building or its contents which has been vacant for more than ninety (90) consecutive days, including the date of the loss.
- l. **Fungi**. This policy does not cover any **claim** made under Section 1 – Property Insurance arising directly or indirectly from fungi including **claims** for the cost to clean up, remove, remediate, or test for the presence or effects of fungi. Fungi means any form of fungi including but not limited to, yeast, mold, mildew, rust, smut, mushroom, spores, mycotoxins, or any other substances, odors, or byproducts arising out of the current or past presence of fungi.

2. With Regard to Buildings and Structures:

- a. Cracking, bulging, expansion of pavements, foundations, walls, floors, ceilings or roofs, unless one or more of the walls or roofs of the building or structure is physically broken and falls to a lower level. This exclusion shall not apply if caused by **earthquake** or **flood**. If, however, direct loss by liquids or gases not otherwise excluded, or collapse results, then this Policy shall cover only the resulting loss.
- b. Extremes or changes of temperature (except to water piping or space heating equipment due to freezing) or changes in relative humidity, regardless of whether or not atmospheric.
- c. Any increase of loss due to interference with rebuilding, repairing, or replacing a building, or with the resumption or continuation of business.
- d. Any increase of loss due to the suspension, lapse or cancellation of any lease or license, contract or order.

3. With Regard to Property in Course of Construction:

- a. Loss or damage to property caused by or resulting from errors in design or testing of that property, except resultant physical loss or damage to other property insured by this Coverage.

- b. The repair or replacement of faulty or defective workmanship, material, or construction, except resultant physical loss or damage to other property insured by this Coverage.
- c. Penalties for non-completion of or delay in completion of contract or non-compliance with contract conditions, nor for loss of use of occupancy, however caused.

4. With Regard to Personal Property:

- a. Shrinkage, evaporation, loss of weight, leakage, depletion, erosion, marring, scratching, exposure to light or change in color, texture or flavor. This exclusion shall not apply if such loss or damage is caused directly by fire or by the combating thereof, lightning, wind storm, hail, explosion, strike, riot or civil commotion, **aircraft**, vehicles, breakage of pipes or apparatus, sprinkler leakage, vandalism and malicious mischief, and theft or attempted theft.
- b. Mechanical derangement, inherent vice, or latent defect.
- c. Processing, renovating, repairing or faulty workmanship, unless fire or explosion ensues, and then only for direct loss or damage caused by such ensuing fire or explosion.

B. Excluded Property. We do not cover physical loss or physical damage to the following property:

1. All animals and birds, except service animals that are identified on your **Schedule of Values**. For those identified service animals, our liability for such loss shall not exceed the amount listed in the **Schedule of Values** or \$10,000, whichever is less, for injury, sickness or death.
2. Land and water, except water which is normally contained within type of tank, piping system or other process equipment.
3. **Aircraft**.
4. Watercraft over fifty (50) feet in length.
5. Standing timber, trees, lawns, shrubs, plants and growing crops.
6. Retaining walls not constituting part of a building when loss is caused by ice or water pressure.
7. Underground mines and mining property located below the surface of the ground.
8. Any property undergoing insulation breakdown tests.
9. Money, notes or securities.
10. Jewelry, furs, precious metals or precious stones, other than as covered under Section V of this Policy.
11. Personal property of anyone other than the **named insured**, unless required as a condition of employment.
12. Any property located in a building which has been vacant for more than ninety (90) consecutive days, including the date of the loss.
13. Dams, canals, and ditches.
14. Roadways, highways, streets, bridges, and guardrails, however characterized.
15. Underground pipes.
16. Any **mobile equipment**, **automobile**, watercraft or other property while participating in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity.

SECTION II - GENERAL LIABILITY INSURANCE AND PREMISES MEDICAL PAYMENTS

General Liability and Premises Medical Payments Insuring Agreements

COVERAGE A. General Liability. We agree, subject to the terms and conditions of this Coverage, to pay on your behalf those sums which you become legally obligated to pay as *damages* for *personal injury* or *property damage* which arise out of an *occurrence* during the Policy Period.

COVERAGE B. Premises and Operations Medical Payments. We agree, subject to the terms and conditions of this Coverage, to pay *medical expenses* incurred during the Policy Period for such immediate medical and surgical relief to others, except any *insured*, as shall be necessary at the time of an *occurrence* on account of *bodily injury* sustained on premises owned or rented by you, or arising out of your operations with your knowledge and consent.

COVERAGE C. Law Enforcement Liability. We agree, subject to the terms and conditions of this Coverage, to pay on your behalf all sums which you become obligated to pay by reason of errors, omissions, or negligent acts arising out of the performance of your duties while providing law enforcement services or the administration of *first aid* resulting in *personal injury* or *property damage* during the Policy Period.

Definitions Applicable to General Liability and Premises Medical Payments Insuring Agreements

The following definitions are applicable to the General Liability and Premises Medical Payments Insuring Agreements of this Policy:

1. **"Accident"** means an unexpected happening without intention or design.
2. **"Automobile"** means a motorized land vehicle, trailer or semi-trailer principally licensed and designed for travel on public roads.
3. **"Bodily Injury"** means physical injury to any person, including death or sexual molestation, and any mental anguish or mental suffering associated with or arising from such physical injury.
4. **"Completed Operations"** means *bodily injury* or *property damage* arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the *bodily injury* or *property damage* occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the *named insured*. Operations include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:
 - a. When all operations to be performed by or on behalf of the *named insured* under the contract have been completed, or
 - b. When all operations to be performed by or on behalf of the *named insured* at the site of the operations have been completed, or
 - c. When the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

5. **"Damages"** means monetary damages awarded through judgment in a court proceeding or through settlement agreed to by us to compensate a claimant for harm suffered.

6. **"First Aid"** means the rendering of emergency medical treatment at the time of an accident and only when other licensed medical professional care is not immediately available.
7. **"Medical Expenses"** means expenses for necessary medical, surgical, x-ray and dental services, ambulance, hospital, professional nursing and funeral services.
8. **"Mobile Equipment"** means equipment that is on wheels or tracks and is not licensed or principally designed for travel on public roads and is self-propelled or specifically designed to be attached to or pulled by a vehicle.
9. **"Occurrence"** means an *accident* or a continuous or repeated exposure to conditions which result in *personal injury* or *property damage* during the Policy Period. All personal injuries to one or more persons and/or *property damage* arising out of an *accident* or a continuous or repeated exposure to conditions shall be deemed one *occurrence*. Coverage for personal injury arising out of sexual molestation shall be covered as one *occurrence* and all *damages* shall be deemed to have occurred at the time the initial act is committed whether committed by one perpetrator or two or more perpetrators acting in concert regardless of the number of incidents of sexual molestation taking place after the initial incident. **This insurance does not apply to any insured that has been found to have committed a criminal act involving sexual molestation.**
10. **"Personal Injury"** means *bodily injury*, mental anguish, shock, sickness, disease, disability, wrongful eviction, malicious prosecution, humiliation, invasion of rights of privacy, libel, slander or defamation of character, piracy and any infringement of copyright of property, erroneous service of civil papers, assault and battery and disparagement of property. As respects Coverage C only, *personal injury* shall also mean false arrest, false imprisonment, detention, unlawful discrimination and violation of civil rights arising out of law enforcement activities.
11. **"Premises"** means any real property or land possessed and controlled by the entity in its capacity as a possessor.
12. **"Property Damage"** means physical damage to or destruction of tangible property, including loss of use resulting from such physical damage or destruction.

**Specific Conditions Applicable to General Liability and
Premises Medical Payments Insuring Agreements**

The following conditions are applicable to the General Liability and Premises Medical Payments Insuring Agreements of this Policy:

1. **Completed Operations.** Coverage A of this Section includes coverage for operations or reliance upon representations or warranties made at any time with respect to such operation, but only if the damage occurs after such operation has been completed or abandoned, and occurs away from *premises* owned by or rented to the *named insured*. Operations include materials, parts, or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:
 - a. When all operations to be performed by or on behalf of the *named insured* under the contract have been completed.
 - b. When all operations to be performed by or on behalf of the *named insured* at the site of the operation have been completed.
 - c. When the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing an operation for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

2. **Hostile Fire and Fire Suppression Liability. Coverage A** of this Section includes coverage for loss or damage arising out of heat, smoke, or fumes resulting from a hostile fire, as well as liability arising out of fire suppression activities by authorized fire fighting personnel. For purposes of this specific condition, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be; provided however, all requirements of the insuring agreement of Coverage A are satisfied.
3. **Garagekeeper's Liability. Coverage A** of this Section includes coverage for the ownership and operation of storage garages and parking lots of the **named insured** as bailees with respect to an **automobile** left in their custody and control; provided however, all requirements of the insuring agreement of Coverage A are satisfied.
4. **Host/Liquor Liability. Coverage A** of this Section includes coverage for the liability resulting from the providing, sale or distribution of alcoholic beverages, or by reason of any local, state or federal liquor control laws; provided however, all requirements of the insuring agreement of Coverage A are satisfied.
5. **Incidental Medical Liability. Coverage A and Coverage C** of this Section includes coverage for professional medical services rendered in the course and scope of delivering such services or during medically supervised training thereof or which should have been rendered to any person or persons (other than **employees** of the **named insured** injured during the course of their employment) only by any of the following persons employed by or acting on behalf of the **named insured**:
 - a. Employed or volunteer Emergency Medical Technicians (EMTs), Paramedics or First Responders.
 - b. Employed or volunteer, Nurse Practitioners, Registered Nurses, Licensed Practical Nurses, or nurses otherwise licensed and regulated under the statutes of the State of Idaho, while employed by you and while acting within the scope of their duties and responsibilities, serving inmates of a jail operated by you.
 - c. Volunteer Registered Nurses, Licensed Practical Nurses, or nurses otherwise licensed and regulated under the statutes of the State of Idaho, while employed by you and while acting within the scope of their duties and responsibilities, serving as EMT, Paramedic, First Responder or Ambulance personnel.
 - d. The providing of **first aid** by a law enforcement officer, fire fighter or **employee** on the pending arrival of professional medical assistance, where the officer, fire fighter or **employee** arrives on the scene of any emergency situation where a person requires medical assistance.
6. **Multiple Insureds, Claims or Claimants.** Inclusion herein of more than one **insured** or the making of more than one **claim** or the bringing of **suits** by more than one person or organization shall not operate to increase our Limits of Coverage.
7. **Personal Injury.** In that event that Coverage A of this Section includes coverage for personal injuries to one (1) or more persons arising out of physical abuse, sexual abuse or molestation by any one (1) person, the actions by any one (1) person shall be deemed to be one (1) occurrence, irrespective of the number of claimants. In the event of an occurrence arising out of the actual, alleged or threatened physical abuse, sexual abuse or molestation involving more than one policy period, our liability under all policy periods during which the named insured has been a Member shall not exceed what it would have been in any one policy period, alone.
8. **Products Liability. Coverage A** of this Section includes coverage for liability arising out of the products or reliance upon a representation or warranty of the **named insured** made at any time with respect to such products, but only if **damages** after such physical possession of such product has been relinquished to another; provided however, all requirements of the insuring agreement of Coverage A are satisfied.
8. **Sewer Back-up Claims. Coverage A** of this Section includes coverage for third-party **claims** for **property damage** arising out of **occurrences** involving sewer line and facilities back-up and related events, for which the **named insured** is clearly responsible; provided however, all requirements of the insuring agreement of Coverage A are satisfied. This coverage extends to mold and other fungus

abatement and remediation demonstrated to be a direct result of an **occurrence** for which you are clearly responsible. Fungi means any form of fungi including but not limited to, yeast, mold, rust, smut, mushroom, spores, mycotoxins, or any other substances, odors, or byproducts arising out of the current or past presence of fungi.

Exclusions Applicable to General Liability and Premises Medical Payments Insuring Agreements

Liability Coverage under the General Liability and Premises Medical Payments Insuring Agreements does not apply:

1. To any **claim** or loss more specifically covered under any other Section of this Policy.
2. To **personal injury** or **property damage** resulting from an act or omission intended or expected from the standpoint of any **insured** to cause **personal injury** or **property damage**. This exclusion applies even if the **personal injury** or **property damage** is of a different kind or degree, or is sustained by a different person or property, than that intended or expected. This exclusion shall not apply to **personal injury** resulting from the use of reasonable force to protect persons or property, or in the performance of a duty of the **insured**.
3. To the ownership, maintenance or use, including loading and unloading, of watercraft over fifty (50) feet in length, except with respect to operations performed by independent contractors.
4. To **personal injury** or **property damage** resulting from or arising out of the ownership, maintenance, use or entrustment to others of any **automobile**.
5. To **personal injury** or **property damage** resulting from or arising out of the ownership, maintenance, use or entrustment to others of any **aircraft**, airfields, runways, hangars, buildings, or other properties in connection with aviation activities, other than **premises** liability in buildings involving aviation operations to which the general public is admitted.
6. To **property damage** to property you own, rent or occupy; **premises** you sell, give away or have abandoned; property loaned to you; and personal property in your care, custody and control. This exclusion shall not apply to garagekeeper's liability coverage, as provided in the Specific Conditions of this Section.
7. To any **claim** arising out of estimates of probable costs, or cost estimates being exceeded, or for faulty preparation of bid specifications or plans.
8. To any **damages** claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal, or disposal of your product, your work, or the impaired property if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition.
9. To any obligation for which you may be held liable under any workers' compensation, unemployment compensation, disability benefits law, employer's liability, or under any similar federal, state or local law, ordinance, rule or regulation, however characterized, as well as any **claim** or **suit** by a spouse, child, parent, or sibling of an **insured** as a consequence of **personal injury** to the **insured**.
10. To any **claim** or **suit** for which the only monetary **damages** sought are costs of **suit** and/or attorney's fees.
11. To any **claim** of liability arising out of or in any way connected with the operation of the principles of eminent domain, condemnation proceedings, inverse condemnation, annexation, regulatory takings, land use regulation, or planning and zoning activities or proceedings, however characterized, whether such liability accrues directly against you or by virtue of any agreement entered into by or on your behalf.
12. To **personal injury** or medical expense caused by the following diseases: asbestosis, mesothelioma, emphysema, pneumoconiosis, pulmonary fibrosis, pleuritis, endothelioma, or to any lung disease or

any ailment caused by, or aggravated by exposure to or inhalation, consumption or absorption of asbestos in any form.

13. To **personal injury or property damage** due to, or arising out of, the actual or alleged presence of asbestos in any form, including the costs of remedial investigations or feasibility studies, or to the costs of testing, monitoring, abatement, mitigation, cleaning, removal, or disposal of any property or substance; or **damages** arising out of any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with aforementioned; or obligations to share **damages** with or repay someone else who must pay **damages** in connection with the aforementioned.
14. To any **claim** relating to employment or wrongful termination of any person, including threatened, actual or alleged discrimination or harassment.
15. To any investigatory, disciplinary or criminal proceeding against an **insured**, except that we may at our own option, associate counsel in the defense of any such investigatory, administrative or disciplinary proceeding. Should we elect to associate counsel, such election shall not constitute a waiver or estoppel of any rights we may have pursuant to the terms, conditions, exclusions, and limitations of this Policy.
16. To any obligation of a **named insured** to make payments pursuant to Idaho Code § 6-610A, which provides for the payment of defense costs on behalf of certain **employees** of governmental entities who are named as defendants in a criminal action.
17. To any liability arising out of the rendering of or failure to render the following professional health care services:
 - a. Medical, surgical, dental, x-ray or nursing service or treatment or the furnishing of food or beverages in connection therewith; or
 - b. Any professional medical service(s) by a physician, except Supervisory Physician's as defined by Idaho Code § 6-902A (2) (b), and only when performing those duties as outlined in Idaho Code § 6-902A (2) (a).
 - c. Any professional medical service(s) by physician's assistant, or Nurse; or
 - d. Furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances; or
 - e. Handling of or performing post-mortem examination on human bodies; or
 - f. Service by any person as a member of a formal accreditation or similar professional board or committee of the **insured**, or as a person charged with the duty of executing directives of any such board or committee.

However, this exclusion shall not apply to liability of an **insured** for Incidental Medical Liability coverage, as provided in the Specific Conditions to this Section.

18. To any **claim** involving miscalculation of assessments, adjustments, disbursements or the collection of taxes, fees, licenses, however described.
19. To any liability of any **insured** arising out of the rendering of or failure to render services as an officer or director, or other official of any organization, other than the **named insured**. This exclusion does not apply if the **insured** is serving at the direction of or on behalf of the **named insured**, and is acting within the scope of their duties as such.

SECTION III – AUTOMOBILE LIABILITY INSURANCE AND AUTOMOBILE MEDICAL PAYMENTS

Automobile Liability and Automobile Medical Payments Insuring Agreements

COVERAGE A. Automobile Liability. We agree, subject to the terms and conditions of this Coverage, to pay on your behalf those sums which you become legally obligated to pay as **damages** because of **bodily injury** or **property damage** arising out of the ownership, maintenance, use, loading or unloading, of an **insured automobile**.

COVERAGE B. Automobile Medical Payments. We agree, subject to the terms and conditions of this Coverage, to pay an **insured** or on behalf of an **insured**, all reasonable **medical expenses** incurred by an **insured** for medical treatment, services, or products actually rendered as a result of or arising out of **bodily injury** caused by an **automobile accident**. The cost of treatment, services, or products must be incurred within one (1) year after the **accident** or within three (3) years if the injury has been treated within one (1) year from the date of the **accident**.

COVERAGE C. Uninsured/Underinsured Motorists. We agree, subject to the terms and conditions of this Coverage, to pay **damages** for **bodily injury** which an **insured** is legally entitled to recover from the owner or operator of an **uninsured/underinsured automobile**. The **bodily injury** must be caused by **accident** and arise out of the ownership, maintenance, or use of an **uninsured/underinsured automobile**. Any amounts payable for **damages** under this coverage will be reduced by:

1. All sums paid because of **bodily injury** by or on behalf of persons or organizations who may be legally responsible for causing the **bodily injury** and
2. All sums paid by worker's compensation benefits or similar disability law.

This policy will pay under this coverage only after the limits of liability under any applicable **bodily injury** liability policies or bonds have been used up in payments, settlements, or judgments and after all worker's compensation benefits an **employee** may be entitled to have been paid.

Definitions Applicable to Automobile Liability Insurance and Automobile Medical Payments Agreements

The following definitions are applicable to the Automobile Liability Insuring and Automobile Medical Payments Agreements of this Policy:

1. "**Accident**" means an unexpected happening without intention or design.
2. "**Automobile**" means a motorized land vehicle, trailer or semi-trailer principally licensed and designed for travel on public roads.
3. "**Bodily Injury**" means physical injury, sickness or disease, including mental anguish or death resulting therefrom.
4. "**Damages**" means monetary damages awarded through judgment in a court proceeding or through settlement agreed to by us to compensate a claimant for harm suffered
5. "**Insured**", with regard to Coverages B and C of this Section, means anyone **occupying an insured automobile** with the permission of the owner.
6. "**Insured Automobile**" means an **automobile** owned by the **named insured** or a non-owned **automobile** while operated by an **insured** in the course and scope of their duties or such use that is otherwise authorized by the **named insured**.

7. "**Medical Expenses**" means expenses for necessary medical, surgical, x-ray and dental services, ambulance, hospital, professional nursing and funeral services.
8. "**Mobile Equipment**" means equipment that is on wheels or tracks and is not principally licensed and designed for travel on public roads and is self propelled or specifically designed to be attached to or pulled by a vehicle.
9. "**Occupying**" with regard to Coverages "B" and "C" of this section means an individual who, at the time of the **accident** is in physical contact with an insured automobile.
10. "**Proof of Loss**" means any written demand to recover **damages** for *bodily injury* pursuant to Coverages B and C of this Section.
11. "**Property Damage**" means physical damage to or destruction of tangible property, including loss of use resulting from such physical damage or destruction.
12. "**Underinsured Automobile**" means an *automobile* for which the sum of liability limits of all applicable liability bonds or policies at the time of an **accident** is less than the Limits of Coverage applicable to Coverage C of this Section.
13. "**Uninsured Automobile**" means an *automobile*:
 - a. To which a *bodily injury* liability bond or policy does not apply at the time of the **accident**.
 - b. For which an insuring or bonding company denies coverage or has become insolvent.
 - c. Which is a hit-and-run *automobile* and neither the driver nor the owner can be identified. The hit-and-run *automobile* must come in contact with an *insured automobile*.
14. "**You**" with regard to Coverages "B" and "C" of this section means the individual seeking UM/UIM or Automobile Medical Payments under this policy and who was **occupying** an *insured automobile* with the permission of the owner.

Specific Conditions Applicable to Automobile Liability Insurance and Automobile Medical Payments Agreements

The following conditions are applicable to the Automobile Liability Insuring and Automobile Medical Payments Agreements of this Policy:

A. With respect to Coverages A, B and C:

1. **Automobiles Owned by Employees or Authorized Volunteers.** An *automobile* owned by an **employee** or authorized volunteer of the **named insured** is provided coverages afforded by this Section while the *automobile* is being used by an **employee** or authorized volunteer on official business of the **named insured**. Coverage provided by this condition shall be deemed secondary to the coverage of the **employee's** or authorized volunteer's personal insurance, which is deemed to be primary insurance. The intent of this special condition shall not be interpreted to extend coverage to an *automobile* owned by other public or private entities, which are made available to the **named insured** or its **employees**. For these non-owned *automobiles*, the terms and conditions already contained in this Policy shall apply.

This Specific Condition does not apply to volunteers engaged in search and rescue activities. These coverages are intended to be primary insurance for search and rescue volunteers only when actively participating in search and rescue mobilizations initiated by the **named insured**.

2. **Limits of Coverage.** We will not pay more than the applicable Limits of Coverage shown in the Declarations for the coverage afforded under this Section that results from any one **accident**.
3. **Non-Duplication of Benefits.** There will be no duplication of payments under the Automobile Liability, Automobile Medical Payments, and the Uninsured/Underinsured Motorist Coverages,

respectively, of this Policy. Any amounts payable under these coverages will be reduced by the amount of any advance payments.

B. With Respect to Coverage B:

1. **Examinations/Medical Reports.** The injured person may be required to take physical examinations by physicians we choose, as often as we reasonably require. We must be given authorization to obtain medical reports and other records pertinent to any such claim.
2. **Proof of Loss.** As soon as possible, any person making a claim under this Coverage must give us written **proof of loss** as described below. It must include all details we may need to determine the amounts payable.

C. With Respect to Coverage C:

1. **Proof of Loss.** A **Proof of Loss** must be served upon ICRMP as soon as practicable following any such **accident** causing the injury in order to determine the amounts payable. Failure to provide such notice shall be deemed a material and prejudicial breach of this Coverage, and render any coverage null and void. All **proof of losses** presented shall accurately describe the conduct and circumstances which brought about the injury, state the time and place the injury occurred, state the names of all persons involved, and shall contain the amount of **damages** claimed, together with any and all records that exist pertaining to said injury. Said records shall consist of 1) all police reports pertaining to the **accident** and 2) complete medical and billing records from all institutions (hospitals, rehabilitation facilities, and nursing homes) and physician offices. A signed Medical Records Release form must be provided with the **proof of loss** giving ICRMP authorization to obtain additional medical reports and other records pertinent to any such loss.
2. **Arbitration.** If we and any person entitled to recover under Coverage C fail to agree on the amount of **damages** thereof, the amount shall be settled by arbitration. In that event, each party will select an arbitrator. The two arbitrators will then select a third arbitrator. If they cannot agree upon a third arbitrator within thirty (30) days, both parties can ask a district judge in the State of Idaho to select the third arbitrator. Each party will pay the expenses it incurs, and bear the expenses of the third arbitrator equally. Written decisions of any two arbitrators will determine the issues and will be binding. The arbitration will take place pursuant to the Uniform Arbitration Act, Idaho Code Title 7, Chapter 9, unless both parties agree otherwise. Attorneys fees and fees paid to medical and other expert witnesses as part of the arbitration proceeding will not be considered arbitration expenses. These costs and expenses will be paid by the party incurring them.
3. **Prejudgment or Pre-Arbitration Award Interest.** Prejudgment or pre-arbitration award interest shall not begin to accrue until the date that the **proof of loss** is received by us.
4. **Medical Examinations.** The injured person may be required to take, at our expense, physical examinations by physicians we choose, as often as we reasonably require.
5. **Hit-and-Run Accident.** At our request, **you** shall make available for inspection any **automobile** which any **insured occupying** at the time of a hit-and-run **accident**. **You** must also notify a law enforcement agency within twenty-four (24) hours of any hit-and-run **accident**. **You** must also notify us of any such hit-and-run **accident** within seven (7) days of any such **accident**. Failure to provide such notice shall be deemed a material and prejudicial breach of this Coverage, and render any coverage null and void.
6. **Non-Binding Judgment.** No judgment resulting from a **suit** brought without our written consent, or which we are not a party to, is binding on us, either for determining the liability of the **uninsured or underinsured automobile** or owner, or the amount of **damages** sustained.
7. **Non-Stacking of Policies.** If this Policy and any other insurance policy issued to you apply to the same **accident**, the maximum limit of our liability under all the policies shall not exceed the highest applicable limit under any one policy.

**Exclusions Applicable to Automobile Liability Insurance and
Automobile Medical Payments Agreements**

Liability Coverage under the Automobile Liability and Automobile Medical Payments Insuring Agreements does not apply:

A. With respect to Coverages A, B and C:

1. To any **claim** or loss more specifically covered under any other Section of this Policy.
2. To any **bodily injury** sustained by any person, including an **insured**, engaged in the maintenance or repair of an **insured automobile**.
3. To any **claim** that directly or indirectly benefits any worker's compensation or disability benefits insurer.
4. To any **claim** arising out of the operation of **mobile equipment**.

B. With Respect to Coverage A:

1. To **bodily injury** or **property damage** resulting from an act or omission intended or reasonably expected from the standpoint of any **insured** to cause **bodily injury** or **property damage**. This exclusion applies even if the **bodily injury** or **property damage** is of a different kind or degree, or is sustained by a different person or property, than that intended or reasonably expected. This exclusion shall not apply to **bodily injury** and **property damage** resulting from the use of reasonable force to protect persons or property, or in the performance of your duties.
2. **Damages** to property rented to, used by, or in the care, custody or control of any **insured**.
3. To **bodily injury** to any **insured** arising out of or in the course of employment.
4. To any liability for indemnity or contribution brought by any party for **bodily injury** or **property damage** sustained by any **insured**.

C. With Respect to Coverage B:

1. To any **bodily injury** arising out of or resulting from the use of an **automobile** not insured by us.
2. To any **bodily injury** arising out of or resulting from the operation of an **insured automobile** while being used for hire or for a fee with authorization for such use.
3. For **bodily injury** to anyone eligible to receive benefits which are either provided, or are required to be provided, under any worker's compensation, occupational disease, or similar disability law.

D. With Respect to Coverage C:

1. To any **insured** who enters into a settlement with a third party without our written consent.
2. To any **bodily injury** resulting from or arising out of the use of an **automobile** owned by you and not insured by us.

SECTION IV - ERRORS AND OMISSIONS INSURANCE

CLAIMS MADE COVERAGE ONLY

Errors and Omissions Insuring Agreement

COVERAGE A. We agree, subject to the terms and conditions of this Coverage, to pay on your behalf all sums which you shall become legally obligated to pay as **damages** because of any **claim** which is **first made** against you during this Policy Period, arising out of any **wrongful act** by you.

All **wrongful acts**, including all related **wrongful acts**, must take place after the retroactive date, if any, shown in the Declaration Page and before the end of this Policy Period. A **claim** may also be **first made** against you if it is made during any Extended Reporting Period we may provide pursuant to the Specific Conditions outlined in this section below.

COVERAGE B. Employee Medical Insurance Benefit Liability. This coverage is for liability arising out of the negligent computation or withholding of an **employee** medical insurance benefit to which an **employee** of the **named insured** is otherwise entitled; provided, however, all requirements of the Insuring Agreement of Coverage A are satisfied.

Definitions Applicable to Errors and Omissions Insuring Agreement

The following definitions are applicable to the Errors and Omissions Insuring Agreement of this Policy:

1. "**Bodily Injury**" means physical injury to any person, including death or sexual molestation, and any mental anguish or mental suffering associated with or arising from such physical injury.
2. "**Claim**" means a demand received by you for money **damages** alleging a **wrongful act** of a tortious nature by you. No **claim** exists where the only monetary **damages** sought or demanded are costs of **suit** and/or attorney's fees. A **claim** shall include complaints filed with the Idaho Human Rights Commission (IHRC) and the Equal Employment Opportunities Commission (EEOC) subject to the exclusions set out below.
3. "**Damages**" means monetary damages awarded through judgment in a court proceeding or through settlement agreed to by us to compensate a claimant for harm suffered.
4. "**First Made**" means the earlier of the following times, but not later than the end of this Policy Period or the end of any applicable Extended Reporting period:
 - a. When you first give written notice to us that a **claim** has been made against you; or
 - b. When you first give written notice to us of specific circumstances involving a particular person or entity which may result in a **claim**. Reports of incidents or circumstances made by you to us as part of risk management or loss control services shall not be considered notice of a **claim**.
5. "**Personal Injury**" means **bodily injury**, mental anguish, shock, sickness, disease, disability, wrongful eviction, malicious prosecution, humiliation, invasion of rights of privacy, libel, slander or defamation of character, piracy and any infringement of copyright of property, erroneous service of civil papers, assault and battery and disparagement of property
6. "**Property Damage**" means physical damage to or destruction of tangible property, including loss of use.
7. "**Wrongful Act**" means the negligent performance of or failure to perform a legal duty or responsibility in a tortious manner pursuant to the Idaho Tort Claims Act or be premised upon allegations of unlawful violations of civil rights pursuant to Federal law arising out of public office or position.

Specific Conditions Applicable to Errors and Omissions Insuring Agreement

The following conditions are applicable to the Errors and Omissions Insuring Agreement of this Policy:

1. **Extended Reporting Period.** If this Policy is cancelled or not renewed for any reason, other than non-payment of member contribution or non-compliance with the terms and conditions of this Policy, you shall have the option of:
 - a. Upon payment of an additional member contribution, as determined by us, purchasing an Extended Reporting Period extending such insurance afforded by this Section, subject otherwise to its terms, exclusions and conditions, to apply to *claims* which are **first made**, within a maximum period to be agreed to by us following immediately upon the effective date of such cancellation or non-renewal, but only by reason of any **wrongful act** before such termination and otherwise covered by this Coverage; or
 - b. If you do not purchase the Extended Reporting Period, we shall extend such insurance as is afforded by this Section to apply to *claims* which are **first made** against you during the thirty (30) days following immediately upon the effective date of such cancellation or non-renewal, but only by reason of a *claim* covered under this Section, which commences and was sustained subsequent to the Retroactive Date set out in the Declarations and prior to the effective date of such cancellation or non-renewal, and which is otherwise covered by this Coverage.

If, however, this Policy is immediately succeeded by similar *claims* made insurance coverage with any insurer, in which the Retroactive Date is the same as or earlier than that shown in the Declarations, the succeeding policy shall be deemed to be a replacement of this Policy, and you shall have no right to secure an Extended Reporting Period from us.

Your right to purchase the Extended Reporting Period must be exercised by written notice to us not later than thirty (30) days after the cancellation or termination date of this Policy, and must include tender of the entire member contribution for the Extended Reporting Period. If such notice and tender is not so given, you shall not at a later date be able to exercise the right to purchase the Extended Reporting Period.

2. **Multiple Insureds, Claims or Claimants.** Inclusion herein of more than one *insured* or the making of more than one *claim* or the bringing of *suits* by more than one person or organization shall not operate to increase our Limits of Coverage.

Two or more *claims* arising out of a single **wrongful act** or series of related **wrongful acts** shall be treated as a single *claim*. All such *claims*, whenever made, shall be considered **first made** during the Policy Period, or Extended Reporting Period if purchased, in which the earliest *claim* arising out of such **wrongful act** or related **wrongful acts** was **first made** and all such *claims* shall be subject to the same Limits of Coverage.

Exclusions Applicable to Errors and Omissions Insuring Agreement

The Errors and Omissions Insuring Agreement does not cover any *claim*:

1. More specifically covered under any other Section of this Policy.
2. Arising out of any dishonest, fraudulent, criminal, malicious, deliberate or intended **wrongful act** committed by you or at your direction.
3. For **bodily injury, personal injury, or property damage**, as defined in this Section.
4. Resulting from a **wrongful act** intended or expected from the standpoint of any *insured* to cause **damages**. This exclusion applies even if the **damages** claimed are of a different kind or degree than that intended or expected.
5. Based upon or attributable to any *insured* gaining in fact any personal profit or advantage to which they were not legally entitled, including remuneration paid in violation of law.

6. Based upon or attributable to the rendering or failure to render any opinion, treatment, consultation or service, if such opinion, treatment, consultation or service was rendered or failed to have been rendered while any **insured** was engaged in any activity for which they received compensation from any source other than as a public entity or an **employee** of a public entity.
7. Arising out of estimates of probable costs, or cost estimates being exceeded, or for faulty preparation of bid specifications or plans.
8. Arising out of the failure to supply water, electrical power, fuel, or any other utilities.
9. For which you are entitled to indemnity and/or payment by reason of having given notice of any circumstances which might give rise to a **claim** under any policy or policies, the term of which has commenced prior to the inception date of this Policy, or from a **wrongful act** which occurred prior to the retroactive date set forth in the Declarations of this Policy.
10. Resulting from a continuing **wrongful act** which commences prior to the retroactive date set forth in the Declarations of this Policy.
11. Arising out of law enforcement activities or the performance of law enforcement duties.
12. To any **claim** of liability arising out of or in any way connected with the operation of the principles of eminent domain, condemnation proceedings, inverse condemnation, annexation, regulatory takings, land use regulation or planning and zoning activities or proceedings, however characterized, whether such liability accrues directly against you or by virtue of any agreement entered into by or on your behalf.
13. To any obligation of a **named insured** to make payments pursuant to Idaho Code § 6-610A, which provides for the payment of defense costs on behalf of certain **employees** of governmental entities who are named as defendants in a criminal proceeding.
14. Any **claim** for back wages or legal penalties to which the **employee** is lawfully entitled for work performed.
15. Any **claim** involving miscalculation of assessments, adjustments, disbursements or the collection of taxes, fees, licenses, however described.
16. No **claim** exists where the alleged harm for which compensation is sought derives from performance or nonperformance of terms of a contract, concerns the measure of performance or payment related to contract performance, derives from fines, penalties or administrative sanctions imposed by a governmental agency, or is generated by intergovernmental handling or allocation of funds according to the law. The **claims** for which this section provides defense and indemnification must arise out of conduct of a tortious nature or be premised upon allegations of unlawful violation of civil rights pursuant to state or federal law.
17. Arising directly or indirectly out of the failure of any investment in any **employee** benefit program, including but not limited to stocks, bonds, or mutual funds to perform as represented by an **insured**.
18. Arising directly or indirectly out of the negligence, financial failure or breach of contract by any health or **employee** benefit provider that the **named insured** contracts with to provide **employee** benefits.

SECTION V - CRIME INSURANCE

Crime Insuring Agreements

COVERAGE A. Employee Dishonesty or Fraud. We agree, subject to the terms and conditions of this Coverage, to pay the *named insured*, or on its behalf, for loss of money, securities, and other property sustained by the *named insured* resulting directly from one or more *dishonest or fraudulent acts* committed by an *employee* of the *named insured*, acting alone or in collusion with others.

COVERAGE B. Loss Inside the Premises. We agree, subject to the terms and conditions of this Coverage, to pay the *named insured*, or on its behalf, for loss of the money and securities of the *named insured* by the actual destruction, disappearance, or *wrongful taking* within the *premises*.

COVERAGE C. Loss Outside the Premises. We agree, subject to the terms and conditions of this Coverage, to pay the *named insured*, or on its behalf, for loss of the money and securities of the *named insured* by the actual destruction, disappearance, or *wrongful taking* thereof, outside the *premises* while being conveyed by a *messenger* or any armored motor vehicle company.

COVERAGE D. Money Orders and Counterfeit Paper Currency. We agree, subject to the terms and conditions of this Coverage, to pay the *named insured*, or on its behalf, for:

1. Loss sustained by the *named insured* due to the nonpayment upon presentation of any money order issued by any post office or express company which the *named insured* accepts in good faith in exchange for merchandise, money, or services.
2. Loss sustained by the *named insured* due to the good faith acceptance of the *named insured* in the regular course of business of counterfeit United States currency.

COVERAGE E. Depositor's Forgery. We agree, subject to the terms and conditions of this Coverage, to pay the *named insured*, or on its behalf, for loss which the *named insured* shall sustain through forgery or alteration of, on, or in any check, draft, promissory note, bill of exchange or similar written promise, order or direction to pay a sum certain in money made or drawn by or drawn upon the *named insured*, or made or drawn by one acting as agent of the *named insured*, or purporting to have been made or drawn as hereinbefore set forth, including:

1. Any check or draft made or drawn in the name of the *named insured* payable to a fictitious payee and endorsed in the name of such fictitious payee;
2. Any check or draft procured in a face to face transaction with the *named insured*, or with one acting as agent of the *named insured*, by anyone impersonating another and made or drawn payable to the one so impersonated and endorsed by anyone other than the one so impersonated;
3. Any payroll check, payroll draft, or payroll order made or drawn by the *named insured*, payable to bearer as well as to a named payee and endorsed by anyone other than the named payee without authority from such payee.

Definitions Applicable to Crime Insuring Agreements

The following definitions are applicable to the Crime Insuring Agreements of this Policy:

1. "**Dishonest or Fraudulent Acts**" means acts committed by an *employee* of the *named insured* which (a) cause the *named insured* to sustain such loss; and (b) results in financial benefit to the *employee* or another person or organization intended by the *employee* to receive such benefit not otherwise entitled to.
2. "**Employee**" means an officer or *employee* of the *named insured*, including elected or appointed officials, and persons acting on behalf of the *named insured* in any official capacity, temporarily or permanently in the service of the *named insured*. The term *employee* shall not mean a person or other legal entity while acting in the capacity of any broker, factor, commission merchant, consignee, contractor or other agent or representative.

3. **"Messenger"** means any *employee* who is duly authorized by the *named insured* to have the care and custody of the *insured* property outside the *premises*.
4. **"Premises"** means the interior of that portion of any building which is occupied by the *named insured* in conducting its business.
5. **"Wrongful Taking"** means an unauthorized conversion of property, whether or not proven in a court of law.

Specific Conditions Applicable to Crime Insuring Agreements

The following conditions are applicable to the Crime Insuring Agreements of this Policy:

1. **All Incidents - One Loss.** All losses incidental to an actual or attempted fraudulent, dishonest, or criminal act, or series of related acts at the *premises*, whether committed by one or more persons, shall be deemed one loss.
2. **Coverage in Lieu of Public Officials Surety Bond.** Coverage under this Section of this Policy shall be deemed to provide coverage for the terms and responsibilities of public officials or *employees* to the extent required by the Idaho Code bonding requirements for public officials.
3. **Limits of Coverage for Multiple Policy Periods/Prorata.** Payment of loss under Coverages A or E shall not reduce our liability for other losses under the same coverages, whenever sustained. Our total liability is limited to the total amount specified in the Declarations of this Policy for the following:
 - a. Under **Coverage A**, for all losses caused by any *employee* or in which such *employee* is concerned or implicated.
 - b. Under **Coverage E**, for all loss by forgery or alteration committed by any person or in which such person is concerned or implicated, whether such forgery or alteration involves one or more instruments.

Except as provided above for Coverages A and E, the applicable Limits of Coverage stated in the Declarations is the total limit of our liability with respect to all loss of property of one or more persons or organizations arising out of any one occurrence. All losses incidental to an actual or attempted fraudulent, dishonest or criminal act, or series of related acts at the *premises*, whether committed by one or more persons, shall be deemed one loss.

Regardless of the number of years this Policy shall continue in force and the number of member contributions which shall be payable or paid, the Limits of Coverage specified in the Declarations shall not be cumulative from year to year or period to period.

With respect to Coverages A and E, in the event of a loss caused by any person and which occurs partly during the Policy Period and partly during the period of the policies issued by us to the *named insured* and terminated or cancelled or allowed to expire, and in which the period for discovery has not expired at the time any such loss thereunder is discovered, our total liability under this Section and under such other policies shall not exceed, in the aggregate, the applicable Limits of Coverage on such loss or the amount available to the *named insured* under such other policies as limited by the terms and conditions thereof, for any such loss if the latter amount be the larger.

4. **Loss Caused by Unidentified Employees.** If a loss is alleged to have been caused by the fraud or dishonesty of any one or more *employees*, and the *named insured* shall be unable to designate the specific *employee* or *employees* causing such loss, the *named insured* shall nevertheless have the benefit of Coverage A, provided that the evidence submitted reasonably proves that the loss was in fact due to the fraud or dishonesty of one or more *employees* of the *named insured*.
5. **Ownership of Property/Interest Covered.** The insured property may be owned by the *named insured* or held by the *named insured* in its care, custody, or control.

6. **Recoveries.** To the extent that a loss of the *named insured* exceeds the Limits of Coverage applicable to this Section, the *named insured* shall be entitled to recoveries from third parties until the *named insured* is fully reimbursed. Any remaining recovery shall be paid to us. Audit fees incurred by us toward establishing your loss values will be deducted from the ultimate net loss.

Exclusions Applicable to Crime Insuring Agreements

Coverage under the Crime Insuring Agreements does not apply:

A. With Respect to All Coverages:

1. To any *claim* or loss more specifically covered under any other Section of this Policy.
2. To any *claim* for the potential income or increase including, but not limited to, interest and dividends, not realized by the *named insured* because of a loss covered under this Section.
3. To any *claim* for costs, fees, or other expenses incurred by the *named insured* in establishing the existence of, or amount of loss, covered under this Section.

B. With Respect to Coverage A:

1. To any loss, the proof of which, either as to its factual existence or as to its amount, is dependent upon an inventory computation or a profit and loss computation.
2. To any loss that occurs more than one year subsequent to the end of any fiscal year for which Idaho law would require an independent audit by a certified public accountant and in such year when an audit has not been conducted.
3. To any loss claimed involving conduct more than three years prior to the date of the claim or the retro date, whichever is less.

C. With Respect to Coverage B:

1. To any *claim* or loss due to any fraudulent, dishonest, or criminal act by any *employee*, director, trustee, or authorized representative of the *named insured*, while working or otherwise, and whether acting alone or in collusion with others.
2. To any *claim* or loss due to: (a) the giving or surrendering of money or securities in any exchange or purchase; (b) accounting or arithmetical errors or omissions; or (c) manuscripts, books of account, or records.
3. To any *claim* or loss of money contained in coin operated amusement devices or vending machines, unless the amount of money deposited within the device or machine is recorded by a continuous recording instrument therein.

D. With Respect to Coverage C:

1. To any *claim* or loss due to any fraudulent, dishonest, or criminal act by any *employee*, director, trustee, or authorized representative of the *named insured*, while working or otherwise, and whether acting alone or in collusion with others.
2. To any *claim* or loss due to: (a) the giving or surrendering of money or securities in any exchange or purchase; (b) accounting or arithmetical errors or omissions; or (c) manuscripts, books of account, or records.
3. To any insured *claim* or loss of the property of the *named insured* while in the custody of any armored motor vehicle company, except as excess coverage over amounts recovered or received by the *named insured* under: (a) the contract of the *named insured* with said armored motor vehicle company; (b) insurance carried by said armored motor vehicle company for the benefit of users of its services; and (c) all other insurance and indemnity in force in whatsoever form carried by or for the benefit of users of said armored motor vehicle company's service.

SECTION VI – BOILER AND MACHINERY INSURANCE

Boiler and Machinery Insuring Agreements

We agree, subject to the terms and conditions of this Coverage to pay for:

COVERAGE A. Property Damage. Direct damage to **Covered Property** caused by a **Covered Cause of Loss** as listed in the **Schedule of Values** kept on file with us.

COVERAGE B. Expediting Expenses. With respect to direct damage to **Covered Property** we will pay for the extra cost you necessarily incur to make temporary repairs and expedite the permanent repairs or replacement of the damaged property.

COVERAGE C. Business Income and Extra Expense. We will pay your actual loss of **Business Income** during the **Period of Restoration** and **Extra Expense** you necessarily incur to operate your entity during the **Period of Restoration**. We will consider the operations of your entity before the **Breakdown** and the probable experience you would have had without the **Breakdown** in determining the amount of our payment.

COVERAGE D. Spoilage Damage. We will pay for the spoilage damage to raw materials, property in process or finished products, provided conditions are met that are outlined further in this section. We will also pay any necessary expenses you incur to reduce the amount of loss under this coverage. We will pay such expenses to the extent that they do not exceed the amount of loss that otherwise would have been payable under this form.

COVERAGE E. Utility Interruption. Losses resulting from the interruption of utility services provided conditions are met that are outlined further in this section.

COVERAGE F. Newly Acquired Premises. We will automatically provide coverage at newly acquired premises you have purchased or leased. This coverage begins at the time you acquire the property and continues for a period not exceeding ninety (90) days under conditions set forth below.

COVERAGE G. Ordinance or Law. We will pay for increases in loss as necessitated by the enforcement of any laws or ordinances that are in force at the time of the **Breakdown**, which regulate the demolition, construction, repair or use of the building or structure.

COVERAGE H. Errors and Omissions. We will pay for any loss or damage, which is not otherwise payable under this coverage part solely because of any error or unintentional omission in the description or location of property as insured under this coverage part or in any subsequent amendments, any failure through error to include any premises owned or occupied by you at the inception date of this coverage part; or any error or unintentional omission by you that results in cancellation of any premises insured under this policy.

Definitions Applicable to Boiler and Machinery Insuring Agreements

The following definitions are applicable to the Boiler and Machinery Insuring Agreements of this Policy:

1. **Breakdown:**
 - a. Means the following direct physical loss that causes damage to **"Covered Equipment"** and necessitates its repair or replacement:
 - (1) Failure of pressure or vacuum equipment;
 - (2) Mechanical failure including rupture or bursting caused by centrifugal force; or
 - (3) Electrical failure including arcing;unless such loss or damage is otherwise excluded within this Coverage.
 - b. Does **not** mean or include:
 - (1) Malfunction including but not limited to adjustment, alignment, calibration, cleaning or modification;
 - (2) Defects, erasures, errors, limitations or viruses in computer equipment and programs including the inability to recognize and process any date or time or provide instructions to **"Covered Equipment"**;

- (3) Leakage at any valve, fitting, shaft seal, gland packing, joint or connection;
 - (4) Damage to any vacuum tube, gas tube, or brush;
 - (5) Damage to any structure or foundation supporting the **Covered Equipment** or any of its parts;
 - (6) The functioning of any safety or protective device; or
 - (7) The cracking of any part on an internal combustion gas turbine exposed to the products of combustion.
2. **Business Income** means the:
- a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
 - b. Continuing normal operating expenses incurred, including payroll.
3. **Business Income Actual Annual Value** means the sum of the net income and continuing normal operating expenses incurred, including payroll that would have been earned had the **Breakdown** not occurred.
4. **Business Income Estimated Annual Value** means the sum of the net income and continuing normal operating expenses incurred, including payroll as estimated by you in the most recent reported value on file with us via your agent as listed in our eAgent database.
5. **Computer Equipment** means:
- a. Your programmable electronic equipment that is used to store, retrieve and process data; and
 - b. Associated peripheral equipment that provides communication including input and output functions such as printing or auxiliary functions such as data transmission.
- It does **not** include **Data** or **Media**.
6. **Covered Cause of Loss** means a **Breakdown** to **Covered Equipment**.
7. **Covered Equipment**:
- a. Means and includes any:
 - (1) Equipment built to operate under internal pressure or vacuum other than weight of contents;
 - (2) Electrical or mechanical equipment that is used in the generation, transmission or utilization of energy;
 - (3) Communication equipment, and **Computer Equipment**, and
 - (4) Equipment in Paragraphs (1), (2) and (3) that is owned by a public or private utility and used solely to supply utility services to your premises.
 - b. Does **not** mean or include any:
 - (1) **Media**;
 - (2) Part of pressure or vacuum equipment that is not under internal pressure of its contents or internal vacuum;
 - (3) Insulating or refractory material, but not excluding the glass lining of any **Covered Equipment**;
 - (4) Non-metallic pressure or vacuum equipment, unless it is constructed and used in accordance with the American Society of Mechanical Engineers (A.S.M.E.) code or another appropriate and approved code;
 - (5) Catalyst;
 - (6) Vessels, piping and other equipment that is buried below ground and requires the excavation of materials to inspect, remove, repair or replace;
 - (7) Structure, foundation, cabinet or compartment supporting or containing the **Covered Equipment** or part of the **Covered Equipment** including penstock, draft tube or well casing;
 - (8) Vehicle, **aircraft**, self-propelled equipment or floating vessel including any **Covered Equipment** that is mounted upon or used solely with any one or more vehicle(s), **aircraft**, self-propelled equipment or floating vessel;
 - (9) Dragline, excavation, or construction equipment including any **Covered Equipment** that is mounted upon or used solely with any one or more dragline(s), excavation, or construction equipment;

- (10) Felt, wire, screen, die, extrusion plate, swing hammer, grinding disc, cutting blade, non-electrical cable, chain, belt, rope, clutch plate, brake pad, non-metal part or any part or tool subject to periodic replacement;
 - (11) Machine or apparatus used solely for research, diagnosis, medication, surgical, therapeutic, dental or pathological purposes including any **Covered Equipment** that is mounted upon or used solely with any one or more machine(s) or apparatus unless Diagnostic Equipment is shown as INCLUDED in the Declarations; or
 - (12) Equipment or any part of such equipment manufactured by you for sale.
8. **Covered Property** means any property that:
 - a. You own; or
 - b. Is in your care, custody or control and for which you are legally liable.
 9. **Data** means:
 - a. Programmed and recorded material stored on **Media**; and
 - b. Programming records used for electronic data processing, or electronically controlled equipment.
 10. **Extra Expense** means the additional cost you incur to operate your business during the **Period of Restoration** over and above the cost that you normally would have incurred to operate the business during the same period had no **Breakdown** occurred.
 11. **Hazardous Substance** means any substance other than ammonia that has been declared to be hazardous to health by a government agency.
 12. **Media** means electronic data processing or storage media such as films, tapes, discs, drums or cells.
 13. **One Breakdown** means if an initial **Breakdown** causes other **Breakdowns**, all will be considered **One Breakdown**. All **Breakdowns** at any one premises that manifest themselves at the same time and are the direct result of the same cause will be considered **One Breakdown**.
 14. **Period of Restoration** means the period of time that:
 - a. Begins at the time of the **Breakdown** or 24 hours before we receive notice of **Breakdown** whichever is later; and
 - b. Ends 5 consecutive days after the date when the damaged property at the premises described in the Declarations is repaired or replaced with reasonable speed and similar quality.
 15. **Stock** means merchandise held in storage or for sale, raw materials, property in process or finished products including supplies used in their packing or shipping.

Specific Conditions Applicable to Boiler and Machinery Insuring Agreements

The following conditions are applicable to the Boiler and Machinery Insuring Agreements of this Policy:

1. **With Respect to Coverage C – Business Income and Extra Expense:**
 - a. **Damaged Media or Damaged Data.** If **Media** is damaged or **Data** is lost or corrupted, we will pay your actual loss of **Business Income** and/or **Extra Expense** during the time necessary to:
 - (1.) Research, replace or restore the damaged **Media** or lost or corrupted **Data**; and
 - (2.) Reprogram instructions used in any covered **Computer Equipment**.
 - b. There shall be no coverage for any **Media** or **Data** that we determine is not or cannot be replaced or restored.
 - c. We will pay the lesser of your actual loss of **Business Income** and/or **Extra Expense** up to 30 days after the **Period of Restoration** or \$25,000.
2. **With Respect to Coverage D – Spoilage Damage:**
 - a. The raw materials, property in process or finished products must be in storage or in the course of being manufactured;

- b. You must own or be legally liable under written contract for the raw materials, property in process or finished products; and
 - c. The spoilage damage must be due to the lack or excess of power, light, heat, steam or refrigeration.
3. **With Respect to Coverage E – Utility Interruption:**
- a. The interruption is the direct result of a **Breakdown to Covered Equipment** owned, operated or controlled by the local private or public utility or distributor that directly generates, transmits, distributes or provides utility services which you receive;
 - b. The **Covered Equipment** is used to supply electric power, communication services, air conditioning, heating, gas, sewer, water or steam to your premises; and
 - c. The interruption of utility service to your premises lasts at least the consecutive period of time of twenty-four (24) hours. Once this waiting period is met, coverage will commence at the initial time of the interruption and will be subject to all applicable deductibles
4. **With Respect to Coverage F – Newly Acquired Premises:**
- a. You must inform us, in writing, of the newly acquired premises as soon as practicable;
 - b. The coverage for these premises will be subject to the same terms, conditions, exclusions and limitations as other insured premises; and
5. **With Respect to Coverage G – Ordinance or Law:**
- a. **We will pay for:**
 - (1) The loss in value of the undamaged portion of the building or structure as a consequence of enforcement of an ordinance or law that requires the demolition of undamaged parts of the same building or structure;
 - (2) Your actual cost to demolish and clear the site of the undamaged parts of the same building or structure as a consequence of enforcement of an ordinance or law that requires the demolition of such undamaged property; and
 - (3) The increased cost actually and necessarily expended to:
 - (a.) Repair or reconstruct the damaged or destroyed portions of the building or structure; and
 - (b.) Reconstruct or remodel the undamaged portion of that building or structure with buildings or structures of like materials, height, floor area, and style for like occupancy, whether or not demolition is required on:
 - (i) The same premises or on another premises if you so elect. However if you rebuild at another premises, the most we will pay is the increased cost of construction that we would have paid to rebuild at the same premises; or
 - (ii) Another premise if the relocation is required by the ordinance or law. The most we will pay is the increased cost of construction at the new premises.
 - b. **We will not pay for:**
 - (1) Demolition or site clearing until the undamaged portions of the buildings or structures are actually demolished;
 - (2) Increase in loss until the damaged or destroyed buildings or structures are actually rebuilt or replaced and approved by the regulating government agency;

(3) Loss due to any ordinance or law that:

- a. You were required to comply with before the loss, even if the building was undamaged; and
- b. You failed to comply with;

(4) Increase in the loss, excess of the amount required to meet the minimum requirement of any ordinance or law enforcement at the time of the **Breakdown**; or

(5) Increase in loss resulting from a substance declared to be hazardous to health or environment by any government agency.

c. If.

(1) The building or structure is damaged by a **Breakdown** that is covered under this policy;

(2) There is other physical damage that is not covered under this policy; and

(3) The building damage in its entirety results in enforcement of ordinance or law;

then we will not pay the full amount of the loss under this coverage. Instead, we will pay only that proportion of such loss; meaning the proportion that the covered **Breakdown** loss bears to the total physical damage.

But if the building or structure sustains direct physical damage that is not covered under this policy and such damage is the subject of the ordinance or law, then there is no Ordinance or Law coverage under this coverage part even if the building has also sustained damage by a covered **Breakdown**.

6. With Respect to Coverage H – Errors and Omissions:

No coverage is provided as a result of any error or unintentional omission by you in the reporting of values or the coverage you requested.

It is a condition of this coverage that such errors or unintentional omissions shall be reported and corrected when discovered. The policy premium will be adjusted accordingly to reflect the date the premises should have been added had no error or omission occurred.

Exclusions Applicable to Boiler and Machinery Insuring Agreements

We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. The exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

1. **Ordinance or Law.** Increase in loss from the enforcement of any ordinance, law, rule, regulation or ruling which restricts or regulates the repair, replacement, alteration, use, operation, construction, installation, clean-up or disposal of **Covered Property**. However the words use and operation shall be eliminated as respects a covered **Breakdown** to electrical supply and emergency generating equipment located on the premises of a Hospital.
2. **Earth Movement.** Earth movement, including but not limited to **earthquake**, landslide, land subsidence, mine subsidence or volcanic action.
3. **Water:**
 - a. **Flood**, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
 - b. Mudflow or mudslide;
 - c. Water damage caused by backup of sewer, drains or drainage piping; or

- d. Water damage caused by the discharge or leakage of a sprinkler system or domestic water piping.
4. **Nuclear Hazard.** Nuclear reaction or radiation, or radioactive contamination, however caused.
5. **War or Military Action:**
 - a. War, including undeclared or civil war;
 - b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
 - c. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.
6. **An explosion.** However, we will pay for direct loss or damage caused by an explosion of **Covered Equipment** of a kind specified in a. through g. below, if not otherwise excluded in this Section:
 - a. Steam boiler;
 - b. Electric steam generator;
 - c. Steam piping;
 - d. Steam turbine;
 - e. Steam engine;
 - f. Gas turbine; or
 - g. Moving or rotating machinery when such explosion is caused by centrifugal force or mechanical breakdown.
7. **Fire or combustion explosion including those that:**
 - a. Result in a **Breakdown**;
 - b. Occur at the same time as a **Breakdown**; or
 - c. Ensur from a **Breakdown**.
8. Explosion within the furnace of a chemical recovery type boiler or within the passage from the furnace to the atmosphere.
9. Damage to **Covered Equipment** undergoing a pressure or electrical test.
10. Water or other means used to extinguish a fire, even when the attempt is unsuccessful.
11. Depletion, deterioration, corrosion, erosion, or wear and tear. However, if a **Breakdown** occurs, we will pay the resulting loss or damage.
12. A **Breakdown** that is caused by any of the following causes of loss if coverage for that cause of loss is provided by another policy of insurance you have, whether collectible or not:
 - a. **Aircraft** or vehicles;
 - b. Freezing caused by cold weather;
 - c. Lightning;
 - d. Sinkhole collapse;
 - e. Smoke;
 - f. Riot, civil commotion or vandalism; or
 - g. Weight of snow, ice or sleet.
13. A **Breakdown** that is caused by Windstorm or Hail.
14. A delay in, or an interruption of any business, manufacturing or processing activity except as provided by the Business Income and Extra Expense, and Utility Interruption coverages.
15. With respect to Business Income and Extra Expense, and Utility Interruption coverages, the following additional exclusions shall apply:
 - a. The business that would not or could not have been carried on if the **Breakdown** had not occurred;
 - b. Your failure to use due diligence and dispatch and all reasonable means to operate your business as nearly normal as practicable at the premises shown in the **Schedule of Values**;
or

- c. The suspension, lapse or cancellation of a contract following a **Breakdown** extending beyond the time business could have resumed if the contract had not lapsed, been suspended or canceled.
16. Lack or excess of power, light, heat, steam or refrigeration except as provided by the Business Income and Extra Expense, Spoilage Damage and Utility Interruption coverages.
 17. With respect to Utility Interruption coverage, any loss resulting from the following additional causes of loss whether or not coverage for that cause of loss is provided by another policy you have:
 - a. Acts of sabotage;
 - b. Collapse;
 - c. Deliberate act(s) of load shedding by the supplying utility;
 - d. Freezing caused by cold weather;
 - e. Impact of **aircraft**, missile or vehicle;
 - f. Impact of objects falling from an **aircraft** or missile;
 - g. Lightning;
 - h. Riot, civil commotion or vandalism;
 - i. Sinkhole collapse;
 - j. Smoke; or
 - k. Weight of snow, ice or sleet.
 18. Any indirect result of a **Breakdown** to **Covered Equipment** except as provided by the Business Income and Extra Expense, Spoilage Damage and Utility Interruption coverages.
 19. Neglect by you to use all reasonable means to save and preserve **Covered Property** from further damage at and after the time of the loss.
 20. **Limits of Insurance.** The most we will pay for any and all coverages for loss or damage from any **One Breakdown** is the applicable Limit of Insurance shown in the Declarations. Any payment made will not be increased if more than one **insured** is shown in the Declarations. For each coverage listed, if:
 - a. a limit is shown in the Declarations, the limit for such coverage is part of, not in addition to, the Limit per Breakdown.
 - b. A limit is shown in the Declarations, we will not pay more than the Limit of Insurance for each such coverage.
 21. For any **Covered Equipment** that is:
 - a. Used solely to supply utility services to your premises;
 - b. Owned by a public or private utility;
 - c. Not in your care, custody or control and for which you are legally liable; and
 - d. Covered under this Coverage Form.

The Limit of Insurance for Property Damage stated in the Declarations is deleted and replaced by the sum of one dollar. If you are a public or private utility, 4.b. is deleted and replaced by the following:

- b. Owned by a public or private utility other than you;
22. Unless a higher limit is shown in the Declarations, the most we will pay for direct damage as a direct result of a **Breakdown** to **Covered Equipment** is \$25,000 for each of the following. The limits are part of, not in addition to, the Limit of Insurance for Property Damage or Limit per Breakdown.
 - a. **Ammonia Contamination.** The spoilage to **Covered Property** contaminated by ammonia, including any salvage expense.
 - b. **Consequential Loss.** The reduction in the value of undamaged "Stock" parts of a product which becomes unmarketable. The reduction in value must be caused by a physical loss or damage to another part of the product.
 - c. **Data and Media.** Your cost to research, replace or restore damaged **Data** or **Media** including the cost to reprogram instructions used in any **Computer Equipment**.

- d. **Hazardous Substance.** Any additional expenses incurred by you for the clean-up, repair or replacement or disposal of **Covered Property** that is damaged, contaminated or polluted by a **Hazardous Substance**. As used here, additional expenses mean the additional cost incurred over and above the amount that we would have paid had no **Hazardous Substance** been involved with the loss. Ammonia is not considered to be a **Hazardous Substance** as respects this limitation. This coverage applies despite the operation of the Ordinance or Law Exclusion.
- e. **Water Damage.** The damage to **Covered Property** by water including any salvage expenses, except no coverage applies to such damage resulting from leakage of a sprinkler system or domestic water piping.

SECTION VII - CHEMICAL SPRAYING ACTIVITIES LIABILITY INSURANCE

CLAIMS MADE COVERAGE ONLY

Chemical Spraying Activities Liability, Medical Payments and Emergency Clean-Up Expense Agreements

The coverage afforded by this Section constitutes an express exception to the Absolute Pollution Exclusion set forth elsewhere in this policy. As an exception to such Exclusion, this coverage stands only to pay legally required damages for personal injury or property damage not to exceed the coverage limit stated in the policy declarations, and not in any circumstances for natural resource damage claims made pursuant to state or Federal law.

COVERAGE A. Chemical Spraying Activities Liability. We agree, subject to the terms and conditions of this Coverage, to pay on your behalf those sums which you become legally obligated to pay as damages for *personal injury* or *property damage* because of any *chemical spraying activities* claim which is *first made* against you during this Policy Period which arises out of an *occurrence* during this Policy Period or the Policy Period, if any, that immediately preceded the current policy period.

COVERAGE B. Medical Payments. We agree, subject to the terms and conditions of this Coverage, to pay *medical expenses* incurred by the *named insured* during the Policy Period for such immediate medical and surgical relief to others, except any *insured*, as shall be necessary at the time of an *occurrence* on account of *bodily injury*, arising out of *chemical spraying activities*, sustained on premises owned or rented by you, or upon the premises, or those adjoining, where you are authorized by law to carry out chemical spraying activities.

COVERAGE C. Emergency Clean-up Expense. We agree, subject to the terms and conditions of this Coverage, to pay the *named insured* for *emergency clean-up expenses* that are necessary, reasonable, and incurred to curtail or prevent an *occurrence*, arising out of *chemical spraying activities*, which take place during the policy period and that poses an imminent and substantial danger of *personal injury* or *property damage* to which this Coverage applies.

Definitions Applicable to Chemical Spraying Activities Liability, Medical Payments and Emergency Clean-Up Expense Agreements

The following definitions are applicable to the Chemical Spraying Activities Liability, Medical Payments and Emergency Clean-up Expense Agreements of this Policy include (Other specific terms are defined elsewhere in the policy) :

1. "**Accident**" means an unexpected happening without intention or design.
2. "**Bodily Injury**" means physical injury to any person, including death, and any mental anguish or mental suffering associated with or arising from such physical injury.
3. "**Chemical Spraying Activities**" means the intended dispersal of herbicides, defoliants, insecticides or pesticides or other toxic materials approved by the federal government for the eradication of undesirable plant growth, insects or rodents and the mixing, loading, storage, transportation and disposal of such materials.
4. "**Emergency Clean-up Expense**" means the expenses for removal or neutralization of contaminants, irritants, or pollution that pose an imminent and substantial danger of *personal injury* and/or *property damage*, but only those expenses incurred during the first seventy-two (72) hours following chemical spray application.

5. **"First Made"** means the earlier of the following times, but not later than the end of this Policy Period:
 - a. When you first give written notice to us that a claim has been made against you; or
 - b. When you first give written notice to us of specific circumstances involving a particular person or entity which may result in a claim. Reports of incidents or circumstances made by you to us as part of risk management or loss control services shall not be considered notice of a claim.
6. **"Medical Expense"** means expenses for necessary medical, surgical, x-ray and dental services, ambulance, hospital, professional nursing and funeral services.
7. **"Occurrence"** means an **accident** or a continuous or repeated exposure to **chemical spraying activities** which result in **personal injury or property damage** during the Policy Period. All **personal injuries** to one or more persons and/or **property damage** arising out of an **accident** or a continuous or repeated exposure to conditions shall be deemed one **occurrence**.
8. **"Personal Injury"** means **bodily injury**, mental anguish, shock, sickness, disease, disability, wrongful eviction, malicious prosecution, discrimination, humiliation, invasion of rights of privacy, libel, slander or defamation of character, piracy and any infringement of copyright of property, erroneous service of civil papers, assault and battery and disparagement of property.
9. **"Property Damage"** means physical damage to or destruction of tangible property, including loss of use resulting from such physical damage or destruction.

**Specific Condition to Chemical Spraying Liability
Activities, Medical Payments and Emergency Clean-Up Expense Agreements**

The following condition is applicable to the Chemical Spraying Activities Liability, Medical Payments and Emergency Clean-up Expense Agreements of this Section:

Multiple Insureds, Claims or Claimants. Inclusion herein of more than one **insured** or the making of more than one claim or the bringing of suits by more than one person or organization shall not operate to increase our Limits of Coverage. Two or more claims arising out of a single **occurrence** or series of related **occurrences** shall be treated as a single claim. All such claims, whenever made, shall be considered first made during the Policy Period, in which the earliest claim arising out of such **occurrence**, or series of related **occurrences**, was first made and all such claims shall be subject to the same Limits of Coverage. It is the intent of this policy not to extend coverage in any way beyond the liability minimum established by the Idaho Tort Claims Act.

**Exclusions to Chemical Spraying Liability
Activities, Medical Payments and Emergency Clean-Up Expense Agreements**

Liability Coverage under the Chemical Spraying Activities Liability, Medical Payments and Emergency Clean-up Expense Agreements does not apply:

1. To any **claim** or loss more specifically covered under any other Section of this Policy.
2. To **personal injury or property damage** resulting from an act or omission intended or expected from the standpoint of any **insured** to cause **personal injury or property damage**. This exclusion applies even if the **personal injury or property damage** is of a different kind or degree, or is sustained by a different person or property, than that intended or expected.
3. To **personal injury or property damage** resulting from an act or omission outside the course and scope of employment and any act performed with malice or criminal intent. This exclusion applies regardless of whether any **insured** is actually charged with, or convicted of, a crime.

4. To any obligation for which you may be held liable under any workers' compensation, unemployment compensation, disability benefits law, employer's liability, or under any similar federal, state or local law, ordinance, rule or regulation, however characterized, as well as any claim or suit by a spouse, child, parent, or sibling of an **insured** as a consequence of **personal injury** to the **insured**.
5. To any claim or suit for which the only monetary **damages** sought are costs of suit and/or attorney's fees.
6. To any claim based on or attributable to the rendering or failure to render any opinion, treatment, consultation or service, if such opinion, treatment, consultation or service was rendered or failed to have been rendered while you were engaged in any activity for which you received compensation from any source other than as a public entity or an employee of a public entity.
7. To any claim for which you are entitled to indemnity and/or payment by reason of having given notice of any circumstances which might give rise to a claim under any other policy or policies of insurance.
8. To **personal injury** or **property damage** arising out of **chemical spraying activities** which results from or is directly or incidentally attributable to the use of any chemical spraying product in a manner inconsistent or contrary with its product labeling, including the product label approved by any state or federal regulatory agency and any additional written materials which may accompany the product label. For purposes of this exclusion, "labeling" also includes additional sources of information (e.g., EPA Protection Standard, EPA Endangered Species Program Bulletin, state Ground Water Management Plan, company Product Use Bulletins) referenced on the product label or accompanying materials.

ENDORSEMENTS

THESE ENDORSEMENTS CHANGE THE POLICY.

PLEASE READ THEM CAREFULLY.

Upset and Overturn Endorsement

Exception to Pollution Exclusion

Notwithstanding anything to the contrary contained in the policy to which this endorsement attaches, it is hereby understood and agreed that Section III, Automobile Liability Insurance, is extended to cover "**Pollution cost or expense**" as defined and limited below. This coverage is limited to \$25,000 per occurrence and aggregate.

"**Pollution cost or expense**" means any cost or expense arising out of:

1. Any request, demand or order by or on behalf of a governmental authority demanding that the **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, pollutants.
2. Any **claim** or **suit** by or on behalf of a governmental authority demanding the **insured** or test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

"**Pollution cost or expense**" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:

1. Before the pollutants or any property in which the pollutants are contained are moved from the place where they are accepted by the **insured** for movement into or onto the covered **automobile or mobile equipment**; or
2. After the pollutants or any property in which the pollutants are contained are moved from the covered **automobile or mobile equipment** to the place where they are finally delivered, disposed of or abandoned by the **insured**.

Paragraphs a. and b. above do not apply to **accidents** that occur away from the premises owned by or rented in an Assured with the respects to pollutants not in or upon a covered **automobile or mobile equipment** if:

1. The pollutants or any property in which the pollutants are contained are **upset, overturned** or damaged as a result of the maintenance or use of a covered **automobile or mobile equipment** and
2. The discharge dispersal, seepage, migration, release or escape of the Pollutants is caused directly by such upset, overturn or damage.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED

Terrorism Exclusion Endorsement

This endorsement modifies insurance provided under the ICRMP Public Entity Multi-Line policy:

For the purposes of this endorsement "Terrorism" shall mean activities against persons, organizations or property of any nature:

1. That involve the following or preparation for the following:
 - a. Use or threat of force or violence; or
 - b. Commission or threat of a dangerous act; or
 - c. Commission or threat of an act that interferes with or disrupts an electronic communication, information, or mechanical system; and

2. When all of the following apply:
 - a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
 - b. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.
 - c. The total of insured damage to all types of property in the fifty (50) states of the United States of America, the District of Columbia, the United States Virgin Islands and Puerto Rico exceeds \$25,000,000.

In determining whether the \$25,000,000 threshold is exceeded ICRMP will include all insured damage sustained by property of all persons and entities affected by the incident of Terrorism and business interruption losses sustained by owners or occupants of the damaged property. For the purposes of this provision, insured damage means damage that is covered by any insurance but for the application of any terrorism exclusions.

Multiple incidents of terrorism which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, or limitations of the "policy" to which this endorsement is attached other than as stated above.

TE (Ed. 10/02)

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Data Distortion/Corruption Endorsement

Notwithstanding anything to the contrary contained in the policy to which this endorsement attaches, it is hereby understood and agreed that Section II, Property Insurance, is amended as follows:

ICRMP will not pay for Damage or Consequential loss directly or indirectly caused by, consisting of, or arising from:

- a. Any functioning or malfunctioning of the Internet or similar facility, or of any intranet or private network or similar facility,
- b. Any corruption, destruction, distortion, erasure or other loss or damage to data, software or any kind of programming or instruction set,
- c. Loss of use or functionality whether partial or entire of data, coding program, software, any computer or computer system or other device dependent upon any microchip or embedded logic, and any ensuing inability or failure of the *Insured* to conduct business.

This endorsement shall not exclude subsequent Damage or Consequential loss, not otherwise excluded, which itself results from a Defined Peril not otherwise excluded. Defined Peril shall mean: Fire, Lightning, **Earthquake**, Explosion, Falling **Aircraft**, **Flood**, Smoke, Vehicle Impact, Windstorm or Tempest, Accidental Breakdown of an Object including Mechanical and Electrical Breakdown.

This Endorsement shall not act to increase or broaden coverage afforded by this policy.

Such Damage or Consequential Loss described in A, B, or C above, is excluded regardless of any other cause that contributed concurrently or in any other sequence.

ICRMP
Multi-Lines
Insurance Policy

This Policy of Insurance is issued by ICRMP for all Members to be effective 12:01 A.M., October 1, 2008 for one-year thereafter, unless sooner terminated, for all continuing Members pursuant to and consistent with the Joint Powers Subscribers Agreement approved by the ICRMP Board of Trustees to be effective for the fiscal year beginning at the time above stated.

EXHIBIT C

HERE'S WHAT THE CERTIFICATE CODING MEANS & SOME RULE-OF-THUMB GUIDELINES

CERTIFICATE CODING:


GL - GENERAL LIABILITY (merges policy information into the appropriate certificate location)

AI - ADDITIONAL INSURED Including a holder as an Additional Insured amends the policy to provide coverage for a party who may not otherwise have protection under the policy and requires either a Blanket Additional Insured endorsement to be in place or a specific endorsement issued subsequently to do so. For insured's that commonly have requirements for Additional Insured wording it's best to negotiate a Blanket Additional Insured endorsement up front to avoid extra endorsement activity and additional premium charges. The Blanket Additional Insured endorsement may cost around \$100-300 up front, but adding Additional Insureds separately may cost from \$25 - \$50 each time (see attachment A for sample Blanket Additional Insured endorsement)

APP - AGGREGATE LIMIT PER PROJECT This can also be either an endorsement included on the policy up front, or negotiated on a case-by-case basis. This changes the terms of the policy so that the aggregate limit applies per project rather than per policy term - you will sometimes see this as Aggregate Limit Per Location. This language creates a "nonstandard" certificate (see attachment B for sample Aggregate Limit per Project endorsement)

SI - SEPARATION OF INSURED'S - This might also be referred to as Sovereignty of interests. The current standard CGL form provides specifically for the Separation of Insureds under Section IV - Conditions #7. Including this language on a certificate doesn't alter the coverage beyond the scope of the policy. (see attachment C for applicable section of the CGL policy)

BPD - BROAD FORM PROPERTY DAMAGE - endorses the policy to amend the exclusion on care, custody & control so that it is less restrictive (see attachment D)

 CON - CONTRACTUAL LIABILITY - The current CGL policy provides blanket contractual liability coverage by way of an exception to an exclusion. (see attachment E from the E.C.S. Bulletin that discusses contractual liability and hold harmless wording. Provided that the contract falls within the definition of an "insured contract" contractual liability is included)

CL - CROSS LIABILITY - This is a mostly-obsolete term that is to the great extent implied by the Separation of Insureds provision (see above and attachment C for further information)

XCU - Explosion, Collapse & Underground The standard CGL policy provides for this coverage unless specifically excluded by endorsement. Showing that XCU coverage is amended does not amend or alter the language of the CGL policy. (see attachment F for sample of the XCU exclusion endorsement)

AU - AUTO (merges policy information into the appropriate certificate location). Make sure the correct covered auto symbols are reflected on the certificate - i.e. "any auto" or "leased, hired, borrowed, etc"

APD - AUTO PHYSICAL DAMAGE - Show this in the title of the certificate when not only for hired and/or leased vehicles

LP - LOSS PAYEE - Use in certificate title code when you are for property or services furnished

WC – WORKER'S COMP – Watch for requirements to increase the Employer's Liability limit above the standard \$100/500/100,000 limits. Certificate holders may require \$500/500/500,000 or \$1,000,000 on Employer's Liability which is an increase in premium on the worker's comp policy. If the insured has an umbrella or excess policy that will cover on top of the EL limits, most certificate holders will accept that in place of increased Employers Liability limits. Do not assume the umbrella/excess policy responds to Employer's Liability unless this is specifically shown on the "Underlying Policies" section of the declarations. When placing umbrella/excess you should always negotiate to include that the umbrella limit will exceed Employer's Liability. (You may also see requirements on contracts that refer to US Longshore & Harbor Workers Compensation, or other special endorsements that will require more follow up that we aren't addressing here.)

MC – MOTOR TRUCK CARGO (goes in the "Other" section of the cert). Generally only required for trucking risks, you may be required to show "refer breakdown" coverage as included. Know your policies and whether this is included or not, don't assume or show it on a certificate unless you know.

TR – TRUCKERS – mostly will track with that used for Auto. May be used to denote special coverages & symbols applicable to truck risks.

MO – MORTGAGEE – like Loss Payee, applies in cases where you are using a Property Certificate.

DW – DELETED WORDING ON CANCELLATION CLAUSE – This constitutes an "altered" certificate by deleting the wording that the insurer will "attempt" to send notice of cancellation within the specified time and that failure to do so does not hold the insurer to protect the interests of the certificate holder should they not receive notice, in essence, a guaranty of formal notice of cancellation. If the certificate holder is an Additional Insured, Mortgagee or Loss Payee the policy provides for formal notice of cancellation; some insurers will require and some certificate holders will accept language that says "30 days" notice of cancellation, except 10 days in the event of nonpayment. The wording is deleted by suppressing it from printing when you queue the certificate to print.

WS – WAIVER OF SUBROGATION – This is another requirement that overrides the standard conditions applicable to the policy by eliminating the insured's right to recover from another party for damages that have been paid out under the insured's policy. A waiver of subrogation issued in favor of a certificate holder may incur a premium charge. Often, wording goes along with this that requires the insured's policy to be primary and noncontributory to the certificate holder's.

HH – HOLD HARMLESS – When amendment of certificate required. Hold Harmless language. See Contractual section.

EF – EQUIPMENT FLOATER (appears in the "Other" section). This section is required by a loss payee or lessor on owned or long-term leased equipment. You may be required to note if the policy includes boom or overload coverage. As Contractor's Equipment coverage can vary widely from one carrier to the next, you should always know your policy coverage on this issue if the insured's business has exposures for cranes, forklifts or manlifts that have boom type extensions or lifts. The policy form may specifically exclude coverage for damage to overloaded or over-extended equipment, or make give or take the coverage away by endorsement. Again, don't assume coverage or lack of it without checking the policy.

LR – LEASED OR RENTED EQUIPMENT – same as above, but for short term lease or rental. Make sure that you have coverage on the policy specifying coverage for sub-leased equipment in a limit high enough to cover the item(s) the insured is renting. Note your per item/aggregate limits applicable to leased/rented equipment.

INSTALLATION FLOATER – (goes in "Other" section of cert). Coverage for contractors who

have installation floater coverage. You should show the per job limit and applicable deductible

BUILDER'S RISK - (goes in "Other" section on cert) - same as above. Issuing a certificate is a good time to make sure you have adequate per job/aggregate limits on the coverage

UM - UMBRELLA LIABILITY (merges policy information into the appropriate certificate location)
Umbrella coverage - Unless it is required to be shown, don't automatically include evidence of umbrella or excess liability. This is on a "need to know" basis. If the insured has an umbrella/excess coverage in a limit higher than required by the holder it's OK to show only the limit needed (i.e. they have \$5,000,000 and the certificate requirements only call for \$1,000,000 - issue the certificate to show the lower limit). If you are issuing certificates with different limits for umbrella/excess, the certificate title should indicate that. A title of GL AU UM1M would indicate that the umbrella coverage is for a \$1,000,000 limit only

PL - PROFESSIONAL LIABILITY The treatment of this is somewhat like Umbrella in that some insureds have a limit that is higher than what may be required by the certificate holder and we would issue the certificate in the limit that the holder is requiring.

10D - 10 DAY NOTICE OF CANCELLATION - Standard unless otherwise required

15D, 20 D - not commonly seen, but is also longer notice than standard so should be considered an amended certificate

30D - 30 DAY NOTICE. WHEN 30-DAY NOTICE OF CANCELLATION IS REQUIRED, THIS IS NO LONGER A "STANDARD" CERTIFICATE. MOST OF OUR CARRIERS ALLOW US TO FREELY ISSUE STANDARD CERTIFICATES AND MANY NO LONGER WANT COPIES OF THESE, HOWEVER, A COPY OF NON STANDARD CERTIFICATES SHOULD BE SENT TO THE COMPANY. SOME CARRIERS REQUIRE PRE APPROVAL TO ISSUE NON-STANDARD CERTIFICATES, AND IF THIS IS THE CASE THE FILE SHOULD BE DOCUMENTED (A STICKY NOTE WORKS) TO SHOW THAT PRE APPROVAL IS NEEDED. (MANY SURPLUS LINES CARRIERS DO NOT CONVEY CERTIFICATE ISSUING AUTHORITY TO THE AGENT FOR EITHER STANDARD OR NONSTANDARD FORMS - the General Agent or Underwriter must be contacted for Certificate issuance)

EXAMPLES:

Evidence of coverage for leased or rented equipment: TITLE: 98-99 GL, EF, AI, LP 10D. The current policy term is always used when conveying proof of coverage, (for obvious reasons). GL coverage is always used in conjunction with a certificate for leased equipment, because that is the coverage part that the Additional Insured applies to. An owner of leased equipment is both an Additional Insured and Loss Payee. 10 day notice is shown unless a requirement for 30 day notice is expressed.

"Standard" certificate evidencing General Liability and Auto: TITLE: 98-99 GL AU 10D

Certificate for project owner requiring a waiver of subrogation. Additional insured status and 30 day notice: TITLE: GL AU AI WS 30D

EXHIBIT D

Coverage

Section of Litigation
American Bar Association

Laura A. Foggan and Mary Craig Calkins, Committee Cochairs
Editor in Chief: Erik A. Christiansen

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Articles

3 When Co-Insurers Collide, Who Pays?

by Joseph A. Ziemianski and Claire Lakin-Koel

In 2007, the Texas Supreme Court held that no cause of action exists between co-insurers when they jointly cover a loss and each policy contains a pro rata insurance clause. Several states have adopted a similar approach. Most states, however, continue to follow the majority rule that an insurer paying more than its fair share of damages has the right to seek contribution from other insurers. The majority approach better promotes equitable sharing of defense costs and reasonable settlements.

18 CACI Int'l, Inc. v. St. Paul Fire & Marine Insurance Company—Courts Continue to Struggle with the Boundaries of the “Eight Corners Rule”

by John B. Mumford, Jr. Kathryn E. Kransdorf

In many states, the outcome of insurance coverage litigation over the duty to defend will hinge on the application of the Eight Corners Rule—routinely described by courts as requiring the comparison of the four corners of the insurance policy against the four corners of the underlying complaint; if any allegations may potentially be covered by the policy, the insurer has a duty to defend. But despite its seeming simplicity, application of the “Eight Corners Rule” frequently raises other issues—such as, when, if ever, can the court look to documents outside the “Eight Corners” to decide the duty to defend, and what documents, if any, outside the “Eight Corners” can the court examine? As demonstrated by recent decisions from the United States District Court for the Eastern District of Virginia and the Fourth Circuit Court of Appeals, courts continue to struggle with this issue.

22 Insurance 101—Insights for Young Lawyers: Assessing Coverage Issues under Additional Insured Endorsements

Additional Insured Endorsements can raise a myriad of coverage issues. This article addresses the main issues to consider when confronted with a coverage dispute regarding coverage for an additional insured.

Delgado v. Interinsurance Exchange: The California Supreme Court Restores Clarity to the Analysis of Coverage for Self-Defense

by Rina Carmel

Along the spectrum of negligent/intentional torts is a gray area of conduct that can be negligent or intentional, depending on the facts presented. Assault and battery are classic examples, as those torts range from inadvertently brushing the third-party claimant to hitting him or her on purpose. Parties to the underlying action may try to use this spectrum to characterize conduct as accidental or intentional, depending on whether they want to trigger or eviscerate coverage for the insured defendant.

In situations where self-defense is involved, the coverage analysis can become quite complex. Several reasons exist. First, self-defense is essentially assault and battery,¹ and frequently involves conduct that was, on some level, “intended” against the instigator/assaulted third-party claimant. The factual allegations against the insured may be unclear or conflicting. The underlying complaint may plead intentional conduct, negligent conduct, or both. Second, the allegations may implicate insuring clauses (such as coverage for an “occurrence”)


(Continued on page 10)



Rina Carmel is a senior associate in Carlson, Calladine & Peterson LLP's Los Angeles office, where she specializes in all aspects of complex coverage litigation and analysis under commercial general liability, excess, directors and officers, errors and omissions, first-party property, media and specialty lines policies. Her published decisions include *Century Surety Co. v. United Pac. Ins. Co.*, 109 Cal. App. 4th 1246 (2003), review denied, No. S117884 (Cal. Sept. 17, 2003). She is active in the American Bar Association's Insurance Coverage Litigation Committee and the Defense Research Institute, and has authored numerous articles and speaks frequently on all aspects of insurance law.

CACI Int'l, Inc. v. St. Paul Fire & Marine Insurance Company — Courts Continue to Struggle with the Boundaries of the “Eight Corners Rule”

John B. Mumford, Jr. Kathryn E. Kransdorf

 John Mumford is a director with Hancock, Daniel, Johnson & Nagle, PC, in Richmond, Virginia. John represents insurance companies in complex coverage litigation in numerous state and federal courts, including courts in Virginia, Maryland, and the District of Columbia. He also advises insurers on a variety of coverage matters, such as policy rescission, extra-contractual liability avoidance, as well as the duty to defend and reservation of rights. John's practice involves a wide range of insurance coverages, including commercial general liability, professional liability, technology errors and omissions liability, directors' and officers' liability, fiduciary liability, commercial automobile/garage, auto, workers' compensation, umbrella, property, business interruption, and various specialty coverages.

Kathryn Kransdorf is an associate with Hancock, Daniel, Johnson & Nagle, PC, in Richmond, Virginia. Kathryn focuses her practice on insurance coverage litigation and counseling. She represents insurance companies in a variety of coverage cases in federal courts, Virginia's state courts, and the courts in the District of Columbia. Kathryn advises insurers on such coverage matters as the duty to defend and indemnify under business automobile insurance policies and homeowners insurance policies.

In many states, the outcome of insurance coverage litigation over the duty to defend will hinge on the application of the Eight Corners Rule, sometimes referred to as the Four Corners Rule,¹ a widely applied and well-known analytical framework for determining whether an insurer is obligated to

provide a defense against a lawsuit to the insured. As routinely described by courts deciding the duty to defend, the Eight Corners Rule requires a court to compare the four corners of the insurance policy against the four corners of the underlying complaint; if any allegations may potentially be covered by the policy, the insurer has a duty to defend.²

But, despite its seeming simplicity, application of the “Eight Corners Rule” frequently raises other issues—such as, when, if ever, can the court look to documents outside the “Eight Corners” to decide the duty to defend, and what documents, if any, outside the “Eight Corners” can the court examine? As demonstrated by recent decisions from the United States District Court for the Eastern District of Virginia and the Fourth Circuit Court of Appeals in *CACI Int'l, Inc. v. St. Paul Fire & Marine Insurance Company*, courts continue to struggle with this issue.

[D]espite its seeming simplicity, application of the “Eight Corners Rule” frequently raises other issues—such as, when, if ever, can the court look to documents outside the “Eight Corners” to decide the duty to defend, and what documents, if any, outside the “Eight Corners” can the court examine?

In *CACI Int'l, Inc. v. St. Paul Fire & Marine Insurance Company* (CACI), the insured, a provider of logistical, engineering, technological, and professional support to the United States government, entered into two contracts with the government for the provision of interrogators to assist with military intelligence operations in Iraq.³ Two lawsuits resulted from CACI's services, alleging that detainees had been abused by CACI interrogators in Iraq.⁴

CACI tendered the suits to its insurer, St. Paul, and requested that St. Paul defend it against the lawsuits under CACI's commercial general liability insurance.⁵ St. Paul denied that it owed a duty to

defend.⁶ CACI then filed a declaratory judgment action seeking a declaration that St. Paul had a duty to defend CACI against both lawsuits. The main coverage issue presented was whether CACI's alleged conduct happened within the coverage territory of the policy.⁷ Under the relevant policy language, if CACI's interrogators were in Iraq "for a short time on [CACI's] business", this satisfied the coverage territory requirement.⁸

CACI argued that the complaints were silent as to the length of time that the CACI interrogators were allegedly in Iraq, and that because there was an open possibility that its interrogators were in Iraq for "a short time," St. Paul was obligated to defend it in the underlying lawsuits.⁹ In response, St. Paul referenced CACI's contracts with the United States government to demonstrate that CACI interrogators were deployed to Iraq for an extended duration, well beyond the "short time" period contemplated in the policy.¹⁰ According to the district court, "in arguing their positions, the parties vigorously dispute the quantum of evidence that the Court should consider under the Eight Corners Rule."¹¹ The sharp dispute came about as a result of St. Paul's reliance on CACI's contracts with the United States government to demonstrate that CACI interrogators were deployed to Iraq for much longer than a "short time"—documents that were not exhibits to the complaints.

As an initial matter, the district court recognized that when applying the Eight Corners Rule, courts "look only to the allegations in the complaint to discern whether the insurer has a duty to defend under the policy"¹² The district court noted the rationale behind the Eight Corner Rule:

The rationale behind the rule is evident. It provides an orderly and objective inquiry for determining whether the insurer has a duty to defend, thereby reducing the risk of conflict and adversarial posturing between the insured and its insurer. Furthermore, the rule minimizes litigation. Allowing the insurer to litigate factual disputes before agreeing to defend its insured could result in two costly and time-consuming proceedings for every coverage dispute; the first between the insured and the insurer, and the second between the insured and the complaining party.¹³

The district court then undertook an inquiry of what evidence was "intrinsic" to the complaints such that it could properly be considered for purposes of the Eight Corners Rule—recognizing that "[t]here is a dearth of authority on what constitutes 'intrinsic' evidence for purposes of the Eight Corners Rule."¹⁴ The court discussed that:

... the Eight Corners Rule is a variant of the well-established Four Corners Rule, which is employed to test the legal sufficiency of a complaint at an early stage of litigation. When considering a motion to dismiss under Fed. R. Civ. P. 12(b)(6) in federal court or a demurrer in state court, a court must accept the truth of all well-pleaded allegations in the complaint and ignore any extrinsic evidence.

However, in some cases, a document or exhibit outside of the complaint may be "intrinsic" to the complaint. For instance, a document attached to the complaint is deemed part of that pleading, and may be considered in evaluating a motion to dismiss.

Furthermore, in federal court, "when a defendant attaches a document to its motion to dismiss, 'a court may consider it in determining whether to dismiss the complaint if it was integral to and explicitly relied on in the complaint and if the plaintiffs do not challenge its authenticity.'"¹⁵

Accordingly, the district court reasoned that "[t]here is no reason not to apply these principles here. If a document or exhibit could be considered in evaluating a motion to dismiss . . . , it can also be considered under the Eight Corners Rule."¹⁶ And the district court held that when determining whether an insurer has a duty to defend its insured in litigation, a court may look to (1) the allegations in the underlying complaint, (2) any document or exhibit attached to the complaint, and (3) any document or exhibit explicitly relied on in the complaint if its authenticity is not challenged.¹⁷

While the Fourth Circuit Court of Appeals agreed with the district court's ultimate conclusion—that St. Paul owed no duty to defend CACI against the complaints—the Fourth Circuit was unwilling to adopt the district court's application of the Eight Corners Rule

Utilizing this approach, the district court recognized that not only were exhibits to the complaints intrinsic to the complaint, but that CACI's written contracts with the United States government, which were not exhibits to the complaints, were intrinsic to the complaints because the contracts were expressly incorporated into the complaints, and several of the legal claims asserted in the complaints were predicated on the contractual relationship created by these documents.¹⁸ Relying on these intrinsic documents, the court held that the CACI interrogators were not dispatched to Iraq for "a short time," and that St. Paul, therefore, did not owe a defense to CACI.¹⁹

CACI appealed this decision. While the Fourth Circuit Court of Appeals agreed with the district court's ultimate conclusion—that St. Paul owed no duty to defend CACI against the complaints—the Fourth Circuit was unwilling to adopt the district court's application of the Eight Corners Rule.²⁰ According to the Fourth Circuit, while “the district court properly began its inquiry by looking at the complaints . . . it is less clear, however, whether the district court properly extended its inquiry by considering those documents attached to or relied on by the complaints.”²¹ The Fourth Circuit reasoned:

On the one hand, looking beyond the complaint might become a slippery slope. On the other hand, considering documents attached to the complaint would not entail the extensive factual inquiries or lengthy litigation that the Eight Corners Rule seeks to prevent. As the district court noted, we have held in the Rule 12(b)(6) context that courts may look at documents that the defendant attaches to its motion to dismiss. *E.g., Trimble Navigation Ltd.*, 484 F.3d at 705. But those cases are partly motivated by concerns that a plaintiff could prevail on a motion to dismiss by selectively quoting documents in the complaint without providing their full context; therefore, courts can prevent such manipulation by considering the documents in their entirety when presented by the defendant. *See Trigon Healthcare*, 367 F.3d at 234. But there is no apparent need in the insurance context to counter possible manipulations by the plaintiff in the underlying complaint.²²

While the Fourth Circuit ultimately upheld the district court's decision, their diverging interpretations of how the Eight Corners Rule should be applied, and what documents courts can properly consider, provides an excellent example of the uncertainty that often accompanies this seemingly straightforward rule

Accordingly, the Fourth Circuit “declin[ed] to consider those documents attached to the complaints or on which the complaints in the underlying action rely.”²³ The Fourth Circuit also stated that “we find it unnecessary to consider these documents because, as we hold below, the allegations in the complaints themselves foreclose the possibility of coverage under the territorial provision or ‘short time’ exception of the policies.”²⁴

While the Fourth Circuit ultimately upheld the district court's decision, their diverging interpretations of how the Eight Corners Rule should be applied, and what documents courts can properly consider, provides an excellent example of the uncertainty that often accompanies this seemingly straightforward rule. Why is this significant? For both policyholders and insurers, an understanding of how a particular jurisdiction actually applies the Eight Corners Rule, and what exceptions or nuances there might be, is vital and can mean the difference between defense and denial.

¹ Despite the name difference, the “Four Corners Rule” stands for the same principle as the “Eight Corners Rule,” requiring that the duty to defend “be determined by reference to the allegations of the underlying claims against the insured.” *Fortin v. Hartford Underwriters Ins. Co.*, 2009 Conn. Super. LEXIS 386, *13 (Sup. Ct. Conn. Feb. 19, 2009).

² *CACI International v. St. Paul Fire and Marine Insurance Co.*, 567 F. Supp. 2d 824, 829 (E.D. Va. 2008); *see also Ooida Risk Retention Grp., Inc. v. Williams*, 2009 U.S. Dist. LEXIS 18040 (5th Cir. Aug. 12, 2009) (“[T]he insurer’s duty to defend is governed by the ‘eight corners rule,’ which holds that the duty to defend is determined solely from the terms of the policy and the pleadings of the third-party claimant . . . Only these two documents are ordinarily relevant to the duty-to-defend inquiry.”); *Pine Oak Builders, Inc. v. Great Am. Lloyds Ins. Co.*, 279 S.W.3d 650, 645 (Tex. Feb. 13, 2009) (“Under the eight corners rule, the duty to defend is determined by the claims alleged in the petition and the coverage provided in the policy. If a petition does not allege facts within the scope of coverage, an insurer is not legally required to defend a suit against its insured.”).

³ *CACI International v. St. Paul Fire and Marine Insurance Co.*, 567 F. Supp. 2d 824, 826–27 (E.D. Va. 2008).

⁴ *CACI*, 567 F. Supp. 2d at 827–28.

⁵ *CACI*, 567 F. Supp. 2d at 828.

⁶ *CACI*, 567 F. Supp. 2d at 828.

⁷ *CACI*, 567 F. Supp. 2d at 829.

⁸ *CACI*, 567 F. Supp. 2d at 830.

⁹ *CACI*, 567 F. Supp. 2d at 831.

¹⁰ *CACI*, 567 F. Supp. 2d at 831.

¹¹ *CACI*, 567 F. Supp. 2d at 831.

¹² *CACI*, 567 F. Supp. 2d at 831.

¹³ *CACI*, 567 F. Supp. 2d at 831 n. 7.

¹⁴ *CACI*, 567 F. Supp. 2d at 831.

¹⁵ *CACI*, 567 F. Supp. 2d at 831 (internal citations omitted).

¹⁶ CACI, 567 F. Supp. 2d at 832.

¹⁷ CACI, 567 F. Supp. 2d at 832.

¹⁸ CACI, 567 F. Supp. 2d at 832.

¹⁹ CACI, 567 F. Supp. 2d at 832.


²⁰ CACI International, Inc. v. St. Paul Fire and Marine Insurance Co., 566 F.3d 150, 156 (4th Cir. 2009).

²¹ CACI, 566 F. 3d 155-56.

²² CACI, 566 F. 3d 155-56.

²³ CACI, 566 F. 3d 156.

²⁴ CACI, 566 F. 3d 156.



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Attorneys for County of Boise, a Political
Subdivision of the State of Idaho

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

COUNTY OF BOISE, a political
subdivision of the State of Idaho,

Plaintiff,

vs.

IDAHO COUNTIES RISK
MANAGEMENT PROGRAM,
UNDERWRITERS (ICRMP), and
DOES I through X,

Defendants.

Case No. CV OC 09-20083

**PLAINTIFF'S MEMORANDUM
IN SUPPORT OF MOTION FOR
PARTIAL SUMMARY JUDGMENT
REGARDING THE DUTY TO
DEFEND AND IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

COMES NOW Plaintiff, by and through its counsel of record, Brassey, Wetherell & Crawford, and respectfully submits this Memorandum in Support of Plaintiff's Motion for Partial Summary Judgment Regarding the Duty to Defend and In Opposition to Defendant's Motion for Summary Judgment.

I. INTRODUCTION

This case arises from a coverage dispute between Idaho Counties Risk Management Program Underwriters (ICRMP) and its insured, the County of Boise. In January of 2009, Alamar Ranch LLC (“Alamar”) filed a civil rights Complaint against County of Boise (“Boise County”), a political subdivision of the state of Idaho, alleging civil rights violations of the Fair Housing Act, 42 U.S.C. §3601 *et seq.* See Affidavit of Robert T. Wetherell in Support of Motion for Partial Summary Judgment Regarding the Duty to Defend and in Opposition to Defendant’s Motion for Summary Judgment (hereinafter “Aff. of RTW”), Exhibit “A” (hereinafter “Alamar Complaint”). Boise County tendered the lawsuit to its insurer, ICRMP, and requested that ICRMP defend the lawsuit under Boise County’s Public Entity Multi-Lines Insurance Policy in effect at the time of the alleged civil rights violation and the Complaint filed by Alamar, Policy No. 28A01008100108 (“the Policy”). See Aff. of RTW, Exhibit B (hereinafter “ICRMP Policy”). Boise County sought coverage pursuant to the General Liability portion of the Policy and the specific portion of the Policy which included Errors and Omissions insurance coverage. See Complaint for Declaratory Relief. ICRMP denied coverage and refused to defend the Alamar Ranch litigation, claiming that the civil rights allegations in Alamar’s Complaint were not covered under the terms of the ICRMP insurance policy. See Complaint for Declaratory Relief ¶¶9, 17, 18. Boise County then filed the current declaratory judgment action on October 21, 2009, seeking a declaration that ICRMP had a duty to defend Boise County against Alamar’s lawsuit. See Complaint for Declaratory Relief. Plaintiff has fulfilled all conditions precedent to filing the current action as required by the policy here at issue. See Complaint for Declaratory Relief ¶¶6, 8, 18, 20.

For the reasons set forth below, the allegations made against Boise County in the Alamar litigation require ICRMP to defend Boise County as the plain language of the ICRMP Policy provides coverage or, at the very least, the policy is ambiguous as applied to the facts of this case and a duty to defend is owed. In addition, a decision on the duty to indemnify under the policy is premature as the Alamar Complaint alleges both covered and non-covered claims.

II. SUMMARY JUDGMENT STANDARD

Upon motion for summary judgement, the Court will liberally construe all controverted facts in favor of the non-moving party and will draw all reasonable inferences in favor of that party. *Arreguin v. Farmers Insurance Company of Idaho*, 145 Idaho 459, 461, 180 P.3d 498, 500 (2008). Under Idaho Rule of Civil Procedure 56(c), a grant of summary judgment is proper when “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” If there is no genuine issue of material fact, there is only a question of law over which the Court will exercise free review. *Infanger v. City of Salmon*, 137 Idaho 45, 47, 44 P.3d 1100, 1102 (2002). “The fact that the parties have filed cross-motions for summary judgment does not change the applicable standard of review, and this Court must evaluate each party's motion on its own merits.” *Intermountain Forest Mgmt., Inc. v. La. Pac. Corp.*, 136 Idaho 233, 235, 31 P.3d 921, 923 (2001).

III. INTERPRETATION OF INSURANCE POLICIES IN IDAHO

In Idaho, insurance policies are to be interpreted in accordance with general rules of contract law “subject to certain special canons of construction.” *Arreguin*, 145 Idaho at 461, 180 P.3d at 500 (quoting *Clark v. Prudential Prop. & Cas. Ins. Co.*, 138 Idaho 538, 540, 66 P.3d 242, 244 (2003)). When reviewing and interpreting contracts of insurance drafted by an insurance company, “any ambiguity that exists in the contract ‘must be construed most strongly against the insurer.’” *Arreguin*, 145 Idaho at 461, 180 P.3d at 500 (quoting *Farmers Ins. Co. of Idaho v. Talbot*, 133 Idaho 428, 432, 987 P.2d 1043, 1047 (1999)). Furthermore, a provision that seeks to exclude coverage must be strictly construed in favor of the insured. *Moss v. Mid-America Fire and Marine Ins. Co.*, 103 Idaho 298, 300, 647 P.2d 754, 756 (1982). Since an insurance policy is typically drafted by the insurer, the insurer has the burden of using “clear and precise language if it wishes to restrict the scope of coverage and exclusions not stated with specificity will not be presumed or inferred.” *Clark*, 138 Idaho at 541, 66 P.3d at 245. *See also Harman v. Northwestern Mut. Life Ins. Co.*, 91 Idaho 719, 721, 429 P.2d 849, 851 (1967) (concluding that “the burden was upon the defendant to show that the loss or injury was from a risk or cause excepted from the insuring provision.”).

It is a question of law as to whether an insurance policy is ambiguous. *Purvis v. Progressive Cas. Ins. Co.*, 142 Idaho 213, 216, 127 P.3d 116, 119 (2005). In determining whether a policy is ambiguous, the relevant inquiry is whether the language is “reasonably subject to differing interpretations.” *Clark*, 138 Idaho at 541, 66 P.3d at 245 (citing *Moss*, 103 Idaho at 300, 647 P.2d at 756).

In the absence of ambiguity, interpretation of the unambiguous contract is a question of law. *DeLancey v. DeLancey*, 110 Idaho 63, 65, 714 P.2d 32, 34 (1986). The court in *Stein-McMurray Insurance Inc., v. Highlands Ins. Co.*, 95 Idaho 818, 820, 520 P.2d 865, 867 (1974) held that “where a word or phrase used in an insurance contract has a settled legal meaning or interpretation, that meaning or interpretation will be given [effect] even though other interpretations are possible.” If there is no settled legal meaning, courts will determine coverage “according to the plain meaning of the words employed.” *Komrei v. AID Ins. Co. (Mut.)*, 110 Idaho 549, 551, 716 P.2d 1321, 1323 (1986). These general rules of interpretation are tempered by the following:

It is a long established precedent of this Court to view insurance contracts in favor of their general objectives rather than on a basis of strict technical interpretation of the language found therein . . . [A]n insurance contract is to be construed most favorably to the insured and in such a manner as to provide full coverage for the indicated risks rather than to narrow protection. This Court will not sanction a construction of the insurer's language that will defeat the very purpose or object of the insurance.

Bonner County v. Panhandle Rodeo Ass'n, 101 Idaho 772, 776, 620 P.2d 1102, 1106 (1980).

IV. ANALYSIS

A. ICRMP HAS A DUTY TO DEFEND BOISE COUNTY IN THE ALAMAR LITIGATION BECAUSE ALAMAR'S COMPLAINT ASSERTS CIVIL RIGHTS CLAIMS THAT ARE COVERED UNDER THE ICRMP POLICY.

Under Idaho law, an insurer's duty to defend is separate from its duty to indemnify. *Hirst v. St. Paul Fire & Marine Ins. Co.*, 106 Idaho 792, 798, 683 P.2d 440, 446 (Ct. App. 1984). The duty to defend is much broader than the duty to pay damages under an insurance policy. *Id.*

In Idaho, an insurance company's duty to defend "arises upon the filing of a complaint whose allegations, in whole or in part, read broadly, reveal a potential for liability that would be covered by the insured's policy." *Hoyle v. Utica Mutual Ins. Co.*, 137 Idaho 367, 371-72, 48 P.3d 1256, 1260-61 (2002). The Idaho Supreme Court has further elaborated:

[W]here there is doubt as to whether a theory of recovery within the policy coverage has been pleaded in the underlying complaint, or which is potentially included in the underlying complaint, the insurer must defend regardless of potential defenses arising under the policy or potential defenses arising under the substantive law under which the claim is brought against the insured . . . The proper procedure for the insurer to take is to evaluate the claims and determine whether an arguable potential exists for a claim to be covered by the policy; if so, then the insurer must immediately step in and defend the suit.

Hoyle, 137 Idaho at 372, 48 P.3d at 1261 (quoting *Kootenai County v. W. Cas. and Sur. Co.*, 113 Idaho 908, 910-11, 750 P.2d 87, 89-90 (1988)).

Idaho courts have demonstrated a "progressive attitude" in their treatment of claims for breach of the duty to defend. *Black v. Fireman's Fund American Insurance Co.*, 115 Idaho 449, 455, 767 P.2d 824, 830 (Ct. App. 1989). While an insurer's duty to defend is "framed" by the allegations of a plaintiff's complaint, "those pleadings are not to be read narrowly. Rather, a court must look at the full breadth of the plaintiff's claim." *Hirst*, 106 Idaho at 798, 683 P.2d at 446.

In accordance with the canons of insurance contract interpretation set forth in Section III, *supra*, any doubts as to whether there is coverage must be resolved in favor of the insured, and therefore, an insurer seeking to establish that it has no duty to defend confronts a difficult burden. *See Construction Management Systems, Inc. v. Assurance Co. of America*, 135 Idaho 680, 683, 23 P.3d 142, 145 (2001). Even if an insurer believes that the policy itself provides a basis for noncoverage, i.e., an exclusion, it may seek declaratory relief, but "**this does not abrogate the necessity of defending the lawsuit until a determination of noncoverage is made.**" *Kootenai County*, 113 Idaho at 911, 750 P.2d at 90 (emphasis added).

1. **A comparison of the insuring agreement with the underlying complaint in the instant case reveals a potential for coverage.**

i. **General Allegations of the Underlying Complaint.**

On or about January 8, 2009, Alamar Ranch filed a *Complaint and Demand for Jury Trial* against Boise County in United States District Court for the District of Idaho. *See* Alamar Complaint. After setting forth the parties, jurisdiction and venue requirements of the Complaint, the Plaintiff makes “general allegations” beginning at Paragraph 4. The very first paragraph of the general allegations section states: “This case arises out of Boise County’s violations of the Fair Housing Act, 42 U.S.C. §3601 *et seq.* (“FHA”).” *See* Alamar Complaint ¶4.

Alamar makes this allegation in connection with a request of Boise County Commissioners to allow Alamar to operate a residential treatment facility and private school on a portion of a 123-acre parcel located in Boise County, Idaho. *See* Alamar Complaint ¶¶1, 6. The residential treatment facility was designed to house individuals allegedly protected under the Fair Housing Act, namely teenage males suffering from mental and/or emotional illnesses and/or drug/alcohol addiction. *See* Alamar Complaint ¶6.

Alamar submitted its application for a conditional use permit to Boise County Planning and Zoning Commission (“P&Z”) on April 19, 2007, and public hearings on that application were held on August 2, 2007 and August 15, 2007. *See* Alamar Complaint ¶¶6, 7. At the conclusion of the August 15, 2007 hearing, P&Z arrived at a 3-3 tie vote on the motion, which was deemed by Boise County to be a denial of the application. *See* Alamar Complaint ¶10. In its written decision denying Alamar’s application, issued on September 28, 2007, P&Z stated that the residential treatment facility was not appropriate in the proposed location at that time and that the County lacked sufficient infrastructure or money to monitor and enforce the conditions proposed for approval of the application. *See* Alamar Complaint ¶11. Rather than appeal the Planning and Zoning decision under a Planning and Zoning standard, Alamar challenged the decision as a civil rights violation before the Boise County Board of Commissioners.

Alamar appealed to Boise County Board of Commissioners (“Board”) on October 18, 2007, and informed the Board of County Commissioners that it had a duty under the Fair Housing Act to approve the conditional use permit and allow the project in order to make housing available to the “handicapped” youth the facility was designed to serve. *See* Alamar Complaint ¶12. Furthermore, Alamar requested that Boise County make reasonable accommodations under Title VIII of the 1968 Civil Rights statute to allow the residential treatment facility to be built. *See* Alamar Complaint ¶12.

On January 28, 2008, the Board held a public hearing and then deliberated on the record on March 10, 2008. *See* Alamar Complaint ¶¶13, 14. The Board reversed the denial of the application but imposed various restrictions on the project, which Alamar claims violated the civil rights of the handicapped by making the proposed use of the property impossible. *See* Alamar Complaint ¶14.

Other allegations in the Alamar Complaint include claims: 1) that Boise County violated Title VIII of the Civil Rights Act of 1968 by refusing to make reasonable and necessary accommodations to allow the treatment facility to be built by “placing onerous, arbitrary and unreasonable conditions on the approval of the application which destroyed the feasibility of the project” (Count One), *see* Alamar Complaint ¶¶23-25; 2) that Boise County effectively denied the permit by “placing onerous, arbitrary and unreasonable conditions on the permit”(Count Two), *see* Alamar Complaint ¶29; and 3) that Boise County unlawfully interfered with the exercise of the civil rights of would-be residents to housing under the FHA by obstructing the construction or availability of housing to them (Count Three), *see* Alamar Complaint ¶¶35-36.

a. The “Four Corners” or “Eight Corners” Doctrine.

In determining whether a duty to defend exists, a majority of courts have adopted the Four Corners Rule, also known as the Eight Corners Rule, which requires the court to compare the four corners of the insurance policy against the four corners of the underlying complaint. *See generally* John B. Mumford & Kathryn E. Kransdorf, *CAIC Int’l, Inc. v. St. Paul Fire & Marine Ins. Co.—Courts Continue to Struggle with the Boundaries of the “Eight Corners Rule,”* COVERAGE, Nov/Dec 2009, at 18 (discussing the issues surrounding the application of this rule) (attached as

Exhibit D to Aff. of RTW for the convenience of the Court). If any of the claims in the underlying complaint are potentially covered by the policy, the insurer is obligated to provide a defense. In many states, courts struggle over the application of this rule, and there is disagreement over whether the court should be allowed to look to documents outside of the Four Corners in deciding the duty to defend. In applying the rule in Idaho, the Idaho Supreme Court has generally focused on the allegations found in the underlying complaint but has also looked to matters intrinsic to the complaint, such as the elements of an underlying cause of action, in determining whether a duty to defend exists. *See Hoyle*, 137 Idaho at 373, 48 P.3d at 1262 (*see discussion infra* pp.19-20).

Accordingly, in order to understand the claims being made against Boise County, and thus to determine if those claims are potentially covered by the ICRMP Policy, a brief summary of Title VIII of the 1968 Civil Rights Act is necessary.

b. Summary of the Civil Rights Act of 1968, Title VIII, and its Amendments.

Title VIII of the Civil Rights Act of 1968 (“Title VIII”), popularly known as the Fair Housing Act (“FHA”), was enacted to prohibit housing discrimination based on race, color, religion, or national origin. 1988 U.S.C.C.A.N. 2173, 2176. While the Fair Housing Act of 1968 expressed a clear national policy against discrimination in housing, it provided only limited means for enforcing the law. 1988 U.S.C.C.A.N. 2173, 2176. The shortcomings of the FHA were addressed by the Fair Housing Amendments Act of 1988 (“FHAA”), 42 U.S.C. §3601 *et seq.*, which strengthened enforcement mechanisms and also expanded civil rights protection partly to include people with disabilities. *Id.* As amended by the FHAA, the FHA provides, in part, that it is unlawful to:

discriminate in the sale or rental, *or to otherwise make unavailable* or deny, a dwelling to any buyer or renter because of a handicap of--

- (A) that buyer or renter;
- (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
- (C) any person associated with that buyer or renter.

42 U.S.C. §3604(f)(1) (emphasis added). In passing the FHAA, Congress recognized that housing discrimination is not limited to intentional acts of discrimination and that “[a]cts that have the effect of causing discrimination can be just as devastating as intentional discrimination.” 1988 U.S.C.C.A.N. 2173, 2186. Similarly, the United States Supreme Court has observed that discrimination against the handicapped is primarily the result “not of invidious animus, but rather of thoughtlessness and indifference— of benign neglect.” *Alexander v. Choate*, 469 U.S. 287, 295, 105 S.Ct. 712, 717 (1985).

In interpreting Title VIII, Courts have recognized that Congress did not contemplate an intent requirement for violations of the Act. *See Larkin v. State of Michigan Dep't of Social Services*, 89 F.3d 285 (6th Cir. 1996). Analogizing Title VIII to Title VII of the Civil Rights Act of 1964, most courts have concluded that a violation can be established with a showing (1) that the defendants were motivated by an intent to discriminate against the handicapped (“disparate treatment” or “discriminatory intent”) or (2) that the defendant’s otherwise neutral action has an unnecessarily discriminatory effect (“disparate impact”). *Larkin*, 89 F.3d at 289.

ii. The ICRMP Policy.

The Errors and Omissions Insuring Agreement of the ICRMP Policy (hereinafter “Section IV”) provides:

We agree, subject to the terms and conditions of this Coverage, to pay on your behalf all sums which you shall become legally obligated to pay as **damages** because of any **claim** which is **first made** against you during this Policy Period, arising out of any **wrongful act** by you.¹ ICRMP Policy, p. 24. The relevant terms of that provision are

defined as follows:

“**Claim**” means a demand received by you for money **damages** alleging a **wrongful act** of a tortious nature by you . . .

“**Wrongful Act**” means the negligent performance of or failure to perform a legal duty or responsibility in a tortious manner pursuant to the Idaho Tort Claims Act or

¹Boldfaced terms found in original.

be premised upon allegations of unlawful violations of civil rights pursuant to Federal law arising out of public office or position.

ICRMP Policy, p. 24 (italics added).

As set forth in the preceding section, Alamar's Complaint alleges that Boise County violated civil rights pursuant to the Fair Housing Act, and therefore, the allegations fall squarely within the definition of "wrongful act" under Section IV of the ICRMP Policy. At this stage of the analysis, Alamar's civil rights Complaint clearly falls within Policy coverage.

2. **The ICRMP Policy does not contain an exclusion for claims arising under Title VIII of the Civil Rights Act of 1968, or any other claim for civil rights violations, and the Court should not infer one.**

The following exclusions contained in the ICRMP policy, which will be further explored in turn *infra*, are relevant to a determination of whether there is coverage for the civil rights Complaint filed by Alamar:

SECTION IV- ERRORS AND OMISSIONS INSURANCE

...

The Errors and Omissions Insuring Agreement does not cover any claim:

...

2. Arising out of any dishonest, fraudulent, criminal, malicious, deliberate or intended **wrongful act** committed by you or at your direction.

...

4. Resulting from a **wrongful act** intended or expected from the standpoint of any **insured** to cause damages. This exclusion applies even if the **damages** claimed are of a different kind or degree than that intended or expected.

...

12. To any **claim** of liability arising out of or in any way connected with the operation of principles of eminent domain, condemnation proceedings, inverse condemnation, annexation, regulatory takings, land use regulation or planning and zoning activities or proceedings, however characterized, whether such liability accrues directly against you or by virtue of any agreement entered into by or on your behalf.

...

16. No **claim** exists where the alleged harm for which compensation is sought derives from the performance or nonperformance of terms of a contract, concerns the measure of nonperformance or payment related to contract performance, derives from fines, penalties or administrative sanction imposed by a governmental agency, or is

generated by intergovernmental handling or allocation of funds according to the law. The claims for which this section provides defense and indemnification must arise out of conduct of a tortious nature or be premised upon allegations of unlawful violation of civil rights pursuant to state or federal law.

ICRMP Policy, pp. 25-26.

None of the exclusions relied on by ICRMP (Paragraphs 2,4 and 12 *supra*) exclude violations of civil rights or claims alleging discrimination from coverage. It is the position of Boise County that if ICRMP wanted to exclude such claims, it should have done so. Idaho courts have held that an insurer has the burden of using “clear and precise language if it wishes to restrict the scope of coverage and exclusions not stated with specificity will not be presumed or inferred.” *Clark*, 138 Idaho at 541, 66 P.3d at 245. For example, in *Abbie Uriguen Oldsmobile Buick, Inc. v. United States Fire Insurance Company*, 95 Idaho 501, 507, 511 P.2d 783, 789 (1973), the Idaho Supreme Court found that an insurance policy that did not specifically exclude liability for punitive damages covered such damages. The Court concluded that absent any public policy to the contrary, the controversy over whether punitive damages were covered should be resolved in favor of the insured. *Id.*

Similarly, the ICRMP Policy at issue did not exclude claims of discrimination from coverage even though such claims could have been contemplated when the policy was drafted. In the absence of such an exclusion the Court should not infer one. *See Clark*, 138 Idaho at 541, 66 P.3d at 245. Following the Court’s reasoning in *Abbie Uriguen Oldsmobile Buick, Inc.*, the controversy over whether civil rights claims are covered under the ICRMP Policy, when they were not excluded by the plain language of the policy, should be resolved in favor of Boise County. *See Abbie Uriguen Oldsmobile Buick, Inc.*, 95 Idaho at 507, 511 P.2d at 789.

3. **The claims asserted in Alamar’s Complaint are not subject to any of the exclusions from Errors and Omissions coverage under the ICRMP Policy.**

Even though civil rights and discrimination claims are not excluded specifically from the ICRMP Policy, ICRMP argues that they are not entitled to coverage under a strained or inferred interpretation of other exclusions. The Idaho Supreme Court has found that “an insurer seeking to defeat a claim because of an exception or limitation in the policy has the burden of proving that the

loss, or a part thereof, comes within the purview of the exception or limitation set up . . .”*Harman*, 91 Idaho at 721, 429 P.2d at 851 (quoting 29A Am. Jur. *Insurance* § 1854, p. 918). As set forth below, in the present case ICRMP has not met the burden of proving that Alamar’s civil rights claims fall within any of the exclusions from coverage found in the ICRMP Policy.

i. **The intentional act exclusions do not apply to the claims asserted by Alamar when the breadth of those claims are analyzed.**

The ICRMP Policy specifically excludes from coverage under Section IV of the Policy claims arising from intended wrongful acts or wrongful acts expected by the insured to cause damage. It states in pertinent part:

The Errors and Omissions Insuring Agreement does not cover any claim:

...

2. Arising out of any dishonest, fraudulent, criminal, malicious, deliberate or intended **wrongful act** committed by you or at your direction.

...

4. Resulting from a **wrongful act** intended or expected from the standpoint of any **insured** to cause damages. This exclusion applies even if the **damages** claimed are of a different kind or degree than that intended or expected.

See ICRMP Policy, p. 25. ICRMP claims that Alamar’s Complaint alleges only intentional conduct on the part of Boise County and therefore the claims are excluded from coverage. This conclusion is not supported by the plain language of the Alamar Complaint.

As set forth earlier, a violation of Title VIII of the 1968 Civil Rights Act can be either intentional or unintentional. At the outset of the “General Allegations” section of its Complaint, Alamar states: “This case arises out of Boise County’s violations of the Fair Housing Act, 42 U.S.C. §3601 *et seq.* (“FHA”).” See Alamar Complaint ¶4. Under notice pleading, Alamar is putting Boise County on “notice” that it has violated all sections of the Fair Housing Act, 42 U.S.C. §3601 *et seq.* Nowhere does the allegation state that the violation was intentional. Reading Alamar’s Complaint under a notice pleading standard, the essence of the Complaint is that the Defendant, Boise County, violated the Fair Housing Act by arbitrarily and unreasonably placing conditions on Alamar’s permit.

As more fully explored below, the Alamar Complaint broadly alleges that Boise County violated civil rights and includes causes of action based on unintentional conduct.

Under the Plaintiff's First Count (COUNT ONE, VIOLATION OF THE FHA: REASONABLE ACCOMMODATION), the Plaintiff realleges Paragraphs 1 through 19. *See* Alamar Complaint ¶20. After that, Alamar sets forth its claims against Defendant, Boise County. Paragraph 21 states that Alamar submitted an application to develop a residential treatment center for handicapped individuals. Paragraph 22 specifically states that "Boise County knew or reasonably should have known the application was for housing for handicapped individuals." The legal term of art "knew or should have known" sets out a negligence standard. *See Steed v. Grand Teton County*, 144 Idaho 848, 854, 172 P.3d 1123, 1129 (2007).

Furthermore, the specific activity that Boise County is accused of engaging in is placing "onerous, arbitrary, and unreasonable conditions on the approval of the application which destroyed the feasibility of the project," thereby violating the civil rights of the handicapped. *See* Alamar Complaint ¶25. The phrase "arbitrary and unreasonable" clearly sets forth a negligence standard. By way of analogy, not every District Judge who is reversed by the Idaho Supreme Court for making an arbitrary and capricious decision is guilty of intentional conduct, nor is that Judge accused of intentionally attempting to harm one of the litigants before it.

The closest to any "intentional" conduct alleged on the part of Boise County is contained in Plaintiff's Second Count (COUNT TWO: VIOLATION OF THE FHA DISPARATE TREATMENT). *See* Alamar Complaint ¶¶27-32. As set forth above, a violation of the FHA can be established by a showing of disparate treatment, which is intentional, or disparate impact, which is unintentional and neutral on its face. *See Larkin*, 89 F.3d 285. Count Two of the Complaint generally alleges a disparate treatment claim, which does require intent. However, the first paragraph of that Count states: "The allegations included in the above paragraphs are incorporated by reference and made a part hereof." *See* Alamar Complaint ¶27. By Paragraph 27, Alamar has reincorporated a broad based allegation of violations of civil rights and has included paragraphs under this Count which clearly implicate the negligence of disparate impact.

Additionally, even what initially seems to be an allegation of intentional conduct under Count Two fades as the Count is further examined. Paragraph 29 states that Boise County “effectively denied the permit by placing onerous, arbitrary and unreasonable conditions on the permit.” Once again, the Plaintiff uses language that sounds in negligence.

Alamar itself shows that it is on shaky ground in alleging intentional conduct under Count Two of its civil rights Complaint. In fact, it would be hard to fashion a weaker allegation of intentional conduct. Paragraph 31 of Count Two states: “Upon information and belief, a discriminatory reason more likely than not motivated the challenged decision of Boise County.” To state that somebody did some intentional act “upon information and belief” and that the motivation was “more likely than not” a result of intentional conduct, would not meet muster when presenting the case to the Court unless there was some factual basis for such an allegation. Such statements certainly do not meet the clear and convincing standard required to prove claims alleging intentional conduct and requesting punitive damages. Even if the language in Count Two is deemed to allege intentional conduct, it does not overcome the incorporating language of Paragraph 27 as discussed *supra*, which realleges allegations of negligent conduct.

The first paragraph of Count Three of the Alamar Complaint, (COUNT THREE: VIOLATION OF THE FHA PROHIBITION AGAINST INTERFERENCE), again incorporates all previous paragraphs as set forth above. *See* Alamar Complaint ¶33. The primary allegation of that Count simply states that Boise County unlawfully interfered with the exercise of the rights of would-be residents of Alamar’s facility to housing under the FHA by obstructing the availability of housing to the handicapped. *See* Alamar Complaint ¶¶35-36.

Finally, Plaintiff requests punitive damages pursuant to 42 U.S.C. § 3613(c). Interestingly, however, this final count of the Complaint does not reallege any of the preceding paragraphs or incorporate them by reference. Clearly, punitive damages would require intentional conduct on the part of Boise County. However, since the Plaintiff controls the drafting of the Complaint, Alamar obviously purposely left out the general allegations of the Complaint and the specific allegations under each of the previous three Counts because of the possibility that those facts would be used to defeat a claim for punitive damages. It would defeat a claim for punitive damages because much of

the activity being described in the general allegations and in Counts One, Two and Three clearly implicate only negligent conduct.

In fact, the Complaint ends with a request that the Court award Alamar “damages in an amount to be proven at trial” and “such other and further relief as the Court deems just and proper.” *See* Alamar Complaint ¶39. This leaves the door wide open for the Plaintiff to seek damages against Boise County for unintentional conduct under the Civil Rights Act of 1968.

Under the liberal notice pleading standard, there is no doubt the Alamar Complaint contains the factual basis and the necessary allegations to put Boise County on notice of a disparate impact claim under Title VIII. Based on the Complaint, Alamar would be able to argue that Boise County was fully on notice that a claim for an unintentional violation of Plaintiff’s civil rights was being pursued in addition to a disparate treatment claim. Accordingly, the allegations of the underlying complaint reveal a potential for coverage under the ICRMP Policy and trigger ICRMP’s duty to defend.

The Idaho Supreme Court’s holding in *Hoyle* supports this conclusion. In that case, every claim in the underlying complaint alleged the acts in question were committed in a “fraudulent, improper and illegal manner.” *Hoyle*, 137 Idaho at 373, 48 P.3d at 1262. *Hoyle* argued that the insurance company had a duty to defend, despite the insurance policy’s exclusion for intentional acts, because facts behind the complaint revealed negligent acts. *Id.* The Court held the facts behind the complaint were irrelevant and that coverage under the insurance policy did not give rise to a duty to defend because the underlying complaint clearly only contained claims for fraudulent, improper, and illegal acts. *Id.*

While the Idaho Supreme Court did not look to the facts behind the complaint in reaching its conclusion, it did look to the basis of the underlying claims and the elements needed to prove these causes of action. *See Hoyle*, 137 Idaho at 373, 48 P.3d at 1262. For instance, the Court noted that an implied covenant of good faith and fair dealing claim sounds in contract. *Id.* Furthermore, looking at the claim for breach of fiduciary duty the Court stated, “although the breach of a fiduciary duty sounds in tort, and can be actionable for either intentional or negligent breaches of such duties, it is clear from the complaint that [the plaintiff] is not alleging breach of these duties were

committed in a negligent manner.” *Id.* Rather, the plaintiff specifically alleged in its complaint that the duties were breached in an intentional manner. *Id.*

Similarly, the Court in the instant case must review the elements of a Title VIII claim to determine if ICRMP has an obligation to defend. Violations of the 1968 Civil Rights Act can be actionable for both intentional and negligent conduct. Unlike *Hoyle*, however, the claims asserted in the instant case do not clearly allege only intentional conduct. To the contrary, the gravamen of Alamar’s Complaint is a general allegation that Boise County violated Title VIII of the Civil Rights Act of 1968, and unintentional claims are included in the allegations of the Complaint.

Furthermore, any doubt as to whether Alamar has asserted claims for unintentional conduct must be resolved in favor of Boise County, and ICRMP must defend the suit. This duty to defend exists despite the fact that intentional conduct is a required element of Alamar’s claim for punitive damages; the broad, sweeping allegations of Alamar’s Complaint reveal the basis for claims based on unintentional conduct. If one claim for relief is covered all claims must be defended. *See Kootenai County*, 113 Idaho at 910, 750 P.2d at 89 (“The duty to defend arises upon the filing of a complaint whose allegation, in whole or in part, read broadly, reveal a potential for liability that would be covered by the insured’s policy.”).

ii. **Alamar’s claims are not subject to the so called “Planning and Zoning” exclusion of the ICRMP policy.**

ICRMP also argues there is no coverage under the Policy due to the operation of another exclusion. The relevant provision states that there is no Errors and Omissions coverage:

12. To any **claim** of liability arising out of or in any way connected with the operation of principles of eminent domain, condemnation proceedings, inverse condemnation, annexation, regulatory takings, land use regulation or planning and zoning activities or proceedings, however characterized, whether such liability accrues directly against you or by virtue of any agreement entered into by or on your behalf.

ICRMP Policy, p. 26. As an exclusively government entity insurer, ICRMP clearly could have contemplated the possibility that claims could be brought against its insureds under Title VIII of the Civil Rights Act of 1968, yet such claims were not specifically excluded by the ICRMP Policy.

Instead, ICRMP asks the Court to stretch the exclusion found in Paragraph 12 to include the civil rights claims alleged against Boise County in the instant case.

Idaho has rejected the doctrine of reasonable expectations in interpreting insurance contracts, and instead, such contracts are to be “understood in their plain, ordinary and proper sense, according to the meaning derived from the plain wording of the contract.” *Casey v. Highlands Ins. Co.*, 100 Idaho 505, 509, 600 P.2d 1387, 1391 (1979). Therefore, to determine what claims are specifically excluded by this provision, we turn to the plain meaning of the words used. *See Komrei*, 110 Idaho at 551, 716 P.2d at 1323. The relevant terms of that exclusion are defined in pertinent part as follows:

Eminent Domain:

- The right of a government to appropriate private property for public use. *The American Heritage Dictionary* (4th ed. 2001).
- The inherent power of a governmental entity to take privately owned property, esp. land, and convert it to public use, subject to reasonable compensation for the taking. *Black's Law Dictionary* (2nd ed.).

Condemnation:

- To appropriate (property) for public use. *The American Heritage Dictionary* (4th ed. 2001).
- The determination or declaration that certain property (esp. land) is assigned to public use, subject to reasonable compensation; the exercise of eminent domain by a governmental entity. *Black's Law Dictionary* (2nd pocket ed.).

Inverse Condemnation:

- An action brought by a property owner for compensation from a governmental entity that has taken the owner's property without bringing formal condemnation proceedings. *Black's Law Dictionary* (2nd pocket ed.).

Annexation:

- To incorporate (territory) into a larger existing political unit . *The American Heritage Dictionary* (4th ed. 2001).
- The point at which a fixture becomes part of the realty to which it is attached. . . A formal act by which a nation, state, or municipality incorporates land within its dominion. *Black's Law Dictionary* (2nd pocket ed.).

Taking:

- To get possession of; capture; seize. *The American Heritage Dictionary* (4th ed. 2001).

- The act of seizing an article, with or without removing it, but with an implicit transfer of possession or control. *Black's Law Dictionary* (2nd pocket ed.).

Land use planning:

- The deliberate systematic development of real estate through methods such as zoning, environmental-impact studies, and the like. *Black's Law Dictionary* (2nd pocket ed.).

Planning:

- To formulate, draw up, or make a plan or plans. *The American Heritage Dictionary* (4th ed. 2001).

Zoning:

- To divide into zones. *The American Heritage Dictionary* (4th ed. 2001).
- The legislative division of a regions, esp. a municipality, into separate districts with different regulations within the districts for land use, building size, and the like. *Black's Law Dictionary* (2nd pocket ed.).

A review of the relevant definitions clearly reveals that claims for a violation of Title VIII of the 1968 Civil Rights Act are not included in the plain language of the exclusion. *See Clark*, 138 Idaho at 541, 66 P.3d at 245 (insurer has the burden of using “clear and precise language if it wishes to restrict the scope of coverage and exclusions not stated with specificity will not be presumed or inferred.”). Furthermore, all the principles specifically listed in Paragraph 12 relate to real property and the claims thereunder derive from constitutional rights. While it seems as if the Policy is attempting to exclude constitutional claims from coverage, the same cannot be said of statutory civil rights claims. There is a huge difference between a property claim brought under the Constitution (taking, condemnation, etc.) and a claim brought under a federal statutory law first enacted in 1968. There is absolutely no indication that such civil rights claims are excepted from coverage under this provision. *See Harman*, 91 Idaho at 721, 429 P.2d at 851 (the burden is on the insurer to show that the loss or injury was from a risk or cause excepted from the insuring provision). Boise County is not saying that ICRMP cannot make such an exclusion as part of its policy but that such an exclusion would need to be specifically stated in order to be given effect. Interpreting Paragraph 12 by looking at the plain meaning of the words used, this exclusion clearly only covers typical land use and planning and zoning issues such as those stated in the exclusion (i.e. eminent domain,

condemnation, annexation, takings, etc.). It would be improper for the Court to “infer” an exclusion for statutory discrimination and civil rights under a provision that only references claims arising from constitutional rights. *See Clark*, 138 Idaho at 541, 66 P.3d at 245.

In presenting its case to Boise County Board of Commissioners, Alamar did not ask Boise County Board of Commissioners to decide a planning and zoning issue. Instead, Alamar asked the Board to decide Boise County’s duties under Title VIII of the 1968 Civil Rights Act, which is not excluded from coverage under Paragraph 12 of the Policy: “In its appeal, Alamar informed Boise County that it had a duty under the FHA to approve the CUP and allow the project to be built so that housing could be made available for the “handicapped” youth that Alamar proposed to serve. In its appeal brief, Alamar requested Boise County to make reasonable accommodations to allow this housing to be built to serve “handicapped” youth.” *See Alamar Complaint* ¶12. In an attempt to address the civil rights issue before it and to provide reasonable accommodation to the handicapped, Alamar alleges Boise County Board of Commissioners acted arbitrarily and unreasonably, thereby violating civil rights under Title VIII of the 1968 Civil Rights Act. *See Alamar Complaint* ¶¶14-17. If Boise County Board of Commissioners’ decision was a “planning and zoning” decision, the next step would be for Alamar to file a petition for judicial review in the district court under Idaho Code §67-6521(d), part of the Local Land Use Planning Act. *See City of Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 907, 693 P.2d 1108, 1109 (Ct. App. 1984) (after exhausting remedies under local ordinances, the proper procedure for a city disagreeing with the zoning board’s decision is to seek judicial review under the Local Planning Act rather than to file an “appeal.”). Such a petition would not create a covered event under the ICRMP policy. That Alamar instead filed its Complaint in United States District Court for the District of Idaho further emphasizes the fact that its claims against Boise County are civil rights claims under federal law, not traditional planning and zoning claims.

The fact that Boise County Planning and Zoning Commission made the initial decision on Alamar’s application does not turn a civil rights claim into a traditional real property cause of action excluded from coverage by Paragraph 12 of Section IV of the ICRMP Policy. If a civil rights claim is made for jail overcrowding, is the claim excluded because the suit “arose out of” a planning and

zoning decision approving the jail's construction? If a claim is brought under the Idaho Tort Claims Act for negligent road design, is the claim denied because the claim "arose out of" a planning and zoning decision approving the design and construction of the road? It is hard to imagine any local government activity that cannot be traced back to an activity that "arose out of" a planning and zoning decision. Under the interpretation of the Policy which ICRMP seeks this Court to accept, the exclusion could be used to deny coverage in any of these cases and innumerable others.

In fact, in the instant case, ICRMP used this exclusion to deny coverage for a prosecuting attorney fulfilling his statutory duties. Idaho Code §31-2604 and §31-2607. I.C. §31-2604 states in part: "It is the duty of the prosecuting attorney . . . 3.) To give advice to the board of county commissioners, and other public officers of his county, when requested in all public matters arising in the conduct of the public business entrusted to the care of such officers." I.C. §31-2607 further clarifies this duty: "The prosecuting attorney is the legal adviser of the board of commissioners; he must attend their meetings when required, and must attend and oppose all claims and accounts against the county when he deems them unjust or illegal." Pursuant to his duties under these sections, then Boise County Deputy Prosecutor Tim McNeese advised Boise County Board of Commissioners on many matters, including planning and zoning matters. After Alamar filed suit against Boise County, Mr. McNeese inquired of ICRMP to determine if he was entitled to have an attorney represent him at his deposition but was told he would not be provided with an attorney because his activities "arose out of" planning and zoning issues. *See Affidavit of Timothy R. McNeese.* To stretch the "planning and zoning" exclusion in this manner could have very serious ramifications, virtually crippling prosecuting attorneys in their role as legal advisers to county commissioners in any of the innumerable circumstances that might be said to "arise" from a planning and zoning decision. Due to the fear that any professional negligence would not be covered by professional liability insurance, lawyers working for ICRMP's insureds would be well advised to keep their advice to themselves. Citizen volunteers on Planning and Zoning boards, if sued, are totally uninsured under the stretched ICRMP interpretation of the policy. ICRMP insureds are entitled to know, with specific and precise language, that they are uninsured if they are sued in Federal Court for alleged activities which have nothing to do with traditional Planning and Zoning functions. (It

should be noted that under a traditional Planning and Zoning matter, individuals face no personal liability and the County is on its own when a petition is filed in the State Court and handled by the County Prosecutor. This appears to be what the exclusion is attempting to accomplish on its face.) Such a broad interpretation of the "planning and zoning" exclusion defeats the very purpose or object of Errors and Omissions insurance, a construction that this Court cannot sanction. *See Bonner County*, 101 Idaho at 776, 620 P.2d at 1106. To be given effect, therefore, the Court must look to the plain language used in the exclusion and apply it only to traditional planning and zoning claims pursuant to Idaho's statutory scheme.

iii. **In the event that Alamar's claims are subject to exclusions from Errors and Omissions coverage under the ICRMP Policy, an exception to that exclusion resurrects coverage.**

Even assuming, *arguendo*, that the claims in Alamar's Complaint are excluded from coverage by any of the exclusions in the Errors and Omissions section of the ICRMP Policy, an exception to an exclusion found in Paragraph 16 of Section IV of the ICRMP Policy resurrects coverage for torts and civil rights claims. The relevant provision of Section IV, which ICRMP fails to even acknowledge in its memorandum, states:

SECTION IV- ERRORS AND OMISSIONS INSURANCE

...

16. No **claim** exists where the alleged harm for which compensation is sought derives from the performance or nonperformance of terms of a contract, concerns the measure of nonperformance or payment related to contract performance, derives from fines, penalties or administrative sanction imposed by a governmental agency, or is generated by intergovernmental handling or allocation of funds according to the law. *The claims for which this section provides defense and indemnification must arise out of conduct of a tortious nature or be premised upon allegations of unlawful violation of civil rights pursuant to state or federal law.*

ICRMP Policy, p. 26 (italics added).

The first full sentence of this exclusion further explains, modifies and expands the last sentence of the exclusion found in Paragraph 12, which speaks of liability accruing by virtue of "any agreement entered into by or on your behalf." *See* ICRMP Policy, p. 26. In a like manner, Paragraph 16 further modifies Paragraph 12 and the rest of the Section when it states in the last sentence: "The

claims for which this section provides defense and indemnification must arise out of conduct of a tortious nature or be premised upon allegations of unlawful violation of civil rights pursuant to state or federal law.” This sentence unequivocally states that Section IV of the ICRMP Policy provides coverage for claims arising from tortious conduct or premised on allegations of violations of federal or state civil rights law. This is stated in an unqualified manner. It would be reasonable to interpret this provision as removing such claims from the scope of the so called “Planning and Zoning” exclusions, preserving coverage for claims such as those of the underlying complaint that allege violations of civil rights pursuant to federal law. It is not uncommon for an insurance policy to resurrect coverage for an excluded matter by providing a later stated exception to the exclusion. *See* Aff. of RTW, Exhibit C. At the very least, this sentence results in an ambiguity that must be resolved in favor of the insured. *See Arreguin*, 145 Idaho at 461, 180 P.3d at 500. The only time that civil rights claims are mentioned under “Section IV, Errors and Omissions Insurance” of the Policy, (claims clearly anticipated by this exclusively Idaho governmental entity insurer), such claims are mentioned in the context of providing coverage under the policy.

B. ICRMP’S DUTY TO DEFEND BOISE COUNTY UNDER THE ICRMP POLICY IS SEPARATE FROM AND UNRELATED TO ITS DUTY TO INDEMNIFY.

The claims in Alamar’s civil rights Complaint, in part, are covered under the Errors and Omissions Insuring Agreement of the ICRMP Policy and are not subject to the operation of any of the exclusions found therein. Accordingly, ICRMP has a duty to defend Boise County in the Alamar litigation.

“Once it is determined that an insurer owes a duty to defend, that duty to defend and pay defense costs continues until such time as the insurer can show that the claim against the insured cannot be said to fall within the policy’s scope.” *County of Kootenai*, 113 Idaho at 911, 750 P.2d at 90. In the case at hand, though ICRMP has a duty to defend Boise County based on the allegations in the Alamar Complaint, ICRMP’s duty to indemnify Boise County may be limited depending on facts determined through the course of litigation and the damages, if any, awarded to Alamar. *Cf. County of Kootenai*, 113 Idaho at 911, 750 P.2d at 90 (citing *C. Raymond Davis & Sons, Inc. v.*

Liberty Mutual Ins. Co., 467 F.Supp. 17, 19 (E.D.Pa.1979)) (“if coverage (indemnification) depends upon the existence or nonexistence of facts outside of the complaint that have yet to be determined, the insurer must provide a defense until such time as those facts are determined, and the claim is narrowed to one patently outside the coverage.”). As to the duty to indemnify under the Policy, such a decision is premature as the duty to indemnify requires a more complete record before this Court.

V. CONCLUSION

The allegations made against Boise County in the Alamar litigation require ICRMP to defend Boise County or, at the very least, the policy is ambiguous as applied to the facts of this case and a duty to defend is owed. Accordingly, Boise County respectfully requests that the Court grant its Motion for Partial Summary Judgment Regarding the Duty to Defend. As to ICRMP’s duty to indemnify, a decision on that matter would be premature at this stage as the Court has not been presented with a sufficient record of undisputed facts to make a such a determination and declaration.

DATED this 24 day of March, 2010.

BRASSEY, WETHERELL & CRAWFORD

By


Robert T. Wetherell, Of the Firm

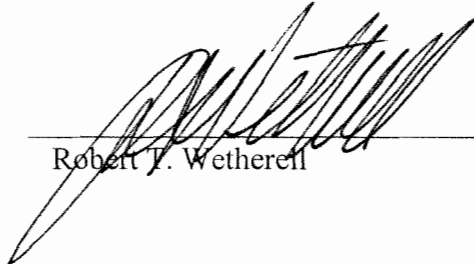
Attorneys for County of Boise, a Political Subdivision
of the State of Idaho

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24 day of March, 2010, I served a true and correct copy of the foregoing upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Phillip J. Collaer
Anderson, Julian, & Hull
P.O. Box 7426
Boise, Idaho 83707

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile 344-5510



Robert T. Wetherell

1. That I am the attorney of record for the County of Boise, I am over the age of eighteen years and am a US citizen. I offer the following testimony upon personal knowledge.

2. That attached hereto as Exhibit "A" is a copy of information related to a lawsuit against Boise County entitled *Mangum et al v. Boise County, et al*, Case No. CV91-00178, filed on or about October 15, 1991.

3. That attached hereto as Exhibit "B" is a copy of information related to a lawsuit filed by Boise County entitled *Boise County v. Lund*, Case No. CV2005-0116, filed on or about May 3, 2005.

4. That upon information and belief, the lawsuits referenced in Exhibits A and B have been the only lawsuits involving planning and zoning issues to which Boise County was a party since approximately 1991.

5. That upon information and belief, Boise County has been insured by Idaho Counties Risk Management Program, Underwriters (ICRMP) since approximately 1991.

6. That both cases were handled by the then Boise County Prosecutor. Boise County did not make a coverage claim to the County's knowledge. The Court can take notice of its own files in the Fourth Judicial District, and these cases are provided only for the Court's convenience.

FURTHER YOUR AFFIANT SAITH NAUGHT.

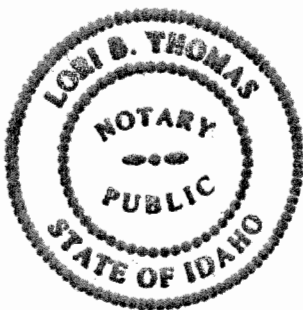
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Dated this 17 day of May, 2010.

BRASSEY, WETHERELL & CRAWFORD

By [Signature]
ROBERT T. WETHERELL
Attorneys for County of Boise

SUBSCRIBED AND SWORN to before me this 17th day of May, 2010.



[Signature]
Notary Public for Idaho
Residing at Boise
Commission expires: 5-2-14

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17 day of May, 2010, I served a true and correct copy of the foregoing upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Phillip J. Collaer
Anderson, Julian, & Hull
P.O. Box 7426
Boise, Idaho 83707

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile 344-5510

[Signature]
Robert T. Wetherell

Louis L. Uranga
URANGA, URANGA & BIETER
714 North 5th Street
P.O. Box 1678
Boise, Idaho 83701
(208)342-8931

Attorneys for Petitioners

DISTRICT COURT BOISE COUNTY, IDAHO

Recorded in Book _____ Page _____

Filed SEP 28 1993
4:00 pm No. _____
ARLENE C. KOLAR, Clerk
By J. Eli Tubbs DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BOISE

FRANCIS MANGUM, an individual,)
BUD ERWIN, an individual, and)
KENNETH W. GUMP, an individual,)
)
) Petitioners,)
)
)
-vs-)
)
)
BOISE COUNTY and MARY HANSON,)
ANDREW F. RUSSO, JR., and USTO)
SCHULZ, each in their capacity)
as Commissioners of Boise County,)
)
) Defendants.)

Case No. CV-91-00178

SATISFACTION OF JUDGMENT

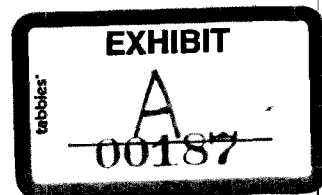
Satisfaction having been made of the Judgment entered herein on the 25th day of June, 1993, in favor of Petitioners and against the Defendants, for \$2,120.60; satisfaction of said Judgment is hereby acknowledged and the Clerk of the Court is authorized and directed to enter of record satisfaction of said Judgment accordingly.

DATED This 23 day of September, 1993.

URANGA, URANGA & BIETER

Louis L. Uranga
LOUIS L. URANGA, Of the Firm
Attorneys for Petitioners

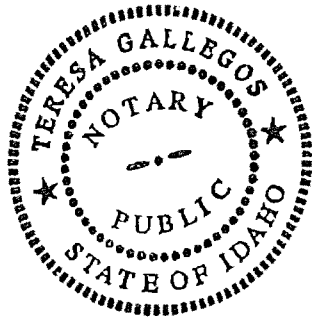
SATISFACTION OF JUDGMENT - 1



STATE OF IDAHO)
 : ss
County of Ada)

On this 23 day of September, 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared LOUIS L. URANGA, known to me be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Teresa Gallegos
NOTARY PUBLIC FOR IDAHO
Residing at: Boise Idaho
Commission Expires: 9-17-97

Filed JUN 25 1993 No. _____

ARLENE C. KOLAR, Clerk

By Louise Stewart DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOISE

FRANCIS MANGUM, an individual,)
BUD ERVIN, an individual, and)
KENNETH W. GUMP, an individual,)
Plaintiff,)
vs.)
BOISE COUNTY, et al,)
Defendant.)

Case No. CV91-00178
CERTIFICATE OF MAILING

I, Arlene C. Kolar, the undersigned authority, do hereby
certify that I have mailed, by United States Mail, one copy of the:
JUDGMENT as notice pursuant to Rule 77(d) I.C.R. to each of the
attorneys of record in this cause in envelopes addressed as
follows:

Louis L. Uranga
URANGA, URANGA, & BIETER
P.O. Box 1678
Boise, Idaho 83701

Dennis Charney
Boise County Prosecutor
P.O. Box 186
Idaho City, Idaho 83631

ARLENE C. KOLAR
Clerk of the District Court
Boise County, Idaho

Date: June 25, 1993

By Louise Stewart
Deputy Clerk

Louis L. Uranga
URANGA, URANGA & BIETER
714 North 5th Street
P.O. Box 1678
Boise, Idaho 83701
(208) 342-8931

Attorneys for Petitioners

DISTRICT COURT BOISE COUNTY, IDAHO
Recorded in Book _____ Page _____

Filed JUN 25 1993
1:25 PM No. _____
ARLENE C. KOLAR, Clerk
By *[Signature]* DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

FRANCIS MANGUM, an individual,)
BUD ERWIN, an individual, and)
KENNETH W. GUMP, an individual,)
Petitioners,)

Case No. CV-91-00178
JUDGMENT

-vs-

BOISE COUNTY and MARY HANSON,)
ANDREW F. RUSSO, JR., and USTO)
SCHULZ, each in their capacity)
as Commissioners of Boise County,)
Defendants.)

Plaintiffs having filed their Memorandum of Costs and Fees on June 4, 1993 and no objection to the Memorandum of Costs and Fees having been made by the Defendant;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff shall have judgment against Defendants for Plaintiffs' costs and fees incurred in this matter in the total sum of \$2,120.60.

DATED This 24 day of June, 1993.

[Signature]
HONORABLE GERALD F. SCHROEDER

Filed MAY 23 1993
8:23 am No.
ARLENE C. KOLAR, Clerk
By J. S. Swick DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOISE

FRANCIS MANGUM, an individual,)
BUD ERWIN, an individual, and)
KENENTH W. GUMP, an individual,)
Petitioners,)
vs.)
BOISE COUNTY and MARY HANSON,)
ANDREW F. RUSSO, JR., and USTO)
SCHULTZ, each in their capacity)
as Commissioners of Boise County,)
Defendants.)

Case No. CV-91-00178
MEMORANDUM OPINION
AND ORDER

The above-named matter is before the court upon the petitioners' motion for partial summary judgment. In prior proceedings the court has ruled in favor of the petitioners on the request for writ of mandate to require Boise County to comply with the directives of the Local Planning Act, I.C. §67-6501 et seq., and initiate a comprehensive planning and zoning scheme. The present motion seeks an adjudication that the petitioners are entitled to money damages for the failure of the county to adopt a comprehensive planning and zoning scheme prior to the court's mandate. The petitioners have submitted evidence by affidavit that the lack of a zoning scheme has allowed adjacent property to be used in a fashion to accumulate junk which has reduced their

1 property values. The county has argued that it would have the
2 right to zone in such a way that the junk would not be moved and
3 the property values not enhanced. However, this appears to be
4 undercut by the express purpose of I.C. §67-6502(a):

5 "The purpose of this act shall be to promote the health,
6 safety, and general welfare of the people of the State of
7 Idaho as follows:

8 (a) To protect property rights and enhance property
9 values."

10 The fundamental question is whether the formulation of zoning
11 ordinances is an "operational" or "discretionary" function. I.C.
12 §6-904 provides in part as follows:

13 "Exceptions to governmental liability. - A governmental
14 entity and its employees while acting within the course
15 and scope of their employment and without malice or
16 criminal intent shall not be liable for any claim which:

17 1. Arises out of any act or omission of an employee of
18 the governmental entity exercising ordinary care, in
19 reliance upon or the execution or performance of a
20 statutory or regulatory function, whether or not the
21 statute or regulation be valid, or based upon the
22 exercise or performance or the failure to exercise or
23 perform a discretionary function or duty on the part of
24 a governmental entity or employee thereof, whether or not
25 the discretion be abused."

26 The discretionary function exception was analyzed by the
Supreme Court in Ransom v. City of Garden City, 113 Idaho 202, 204:

"The discretionary function exception applies to
government decisions entailing planning or policy
formulation."

The court continued to state the following at page 205:

"Routine, everyday matters not requiring evaluation of
broad policy factors will more likely than not be
'operational.' Decisions and actions which involve a
consideration of the financial, political, economic and
social effects of a given plan or policy will generally
be 'planning' and fall within the discretionary function

exception."

1 The court continued to state the following:

2 "Second, the policies underlying the discretionary
3 function exception must be considered. The policies are
4 two-fold:

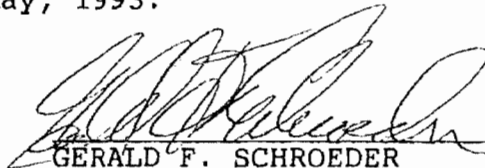
5 (1) To permit those who govern to do so without being
6 unduly inhibited in the performance of that function by
7 the threat of liability for tortious conduct; and (2) to
8 limit judicial re-examination of basic policy decisions
9 properly entrusted to other branches of government."

10 From this analysis it appears that the decision as to the
11 nature of a zoning scheme within the County is a discretionary
12 function. This places the inaction of the County within the
13 exception to liability for "the failure to exercise or perform a
14 discretionary function or duty on the part of a governmental entity
15 or employee thereof, whether or not the discretion be abused."
16 I.C. §6-904(1).

17 Based upon the foregoing the motion for partial summary
18 judgment is denied.

19 It appears to the court that this decision concludes this
20 action. If there are further issues to be addressed, those matters
21 should be directed to the court within a two (2) week period.

22 Dated this 27 day of May, 1993.

23 
24 GERALD F. SCHROEDER
25 District Judge
26

CERTIFICATE OF MAILING

1
2 I do hereby certify that on the 28th day of May, 1993, I
3 caused to be mailed, by United States Mail, one copy of the:
4 MEMORANDUM OPINION AND ORDER as notice pursuant to Rule 77(d)
5 I.C.R. to each of the attorneys of record in this cause in
6 envelopes addressed as follows:
7

8 Dennis Charney
9 Boise County Prosecutor
10 P.O. Box 186
11 Idaho City, Idaho 83631

12 Louis L. Uranga
13 URANGA, URANGA & BIETER
14 P.O. Box 1678
15 Boise, Idaho 83701

16 John Traylor
17 Trial Court Administrator
18 3 copies hand delivered

19 ARLENE C. KOLAR
20 Clerk of the District Court
21 Boise County, Idaho

22 By Jalise Sworch
23 Deputy
24
25
26

Filed MAR 06 1992 No. _____

8:46 am
ARDENE C. KOLAR, Clerk

By *HOUSE M. LNER* DEPUTY

1
2 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
3 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOISE
4

5 FRANCIS MANGUM, an individual,)
6 BUD ERWIN, an individual, and)
7 KENNETH W. GUMP, an individual,)

8 Petitioners,)

9 vs.)

10 BOISE COUNTY and MARY HANSON,)
11 ANDREW F. RUSSO, JR., and USTO)
12 SCHULZ, each in their capacity)
as Commissioners of Boise County,)

13 Respondents.)

Case No. CV 91-00178

MEMORANDUM OPINION

14 The above-named matter is before the court upon a petition for
15 a Writ of Mandamus filed pursuant to Idaho Code § 7-301 et seq.
16 Francis Mangum, Bud Erwin and Kenneth W. Gump, are residents and
17 owners of real property in Boise County who seek a writ of mandate
18 to compel Boise County to adopt a Land Use Plan as directed in I.C.
19 § 67-6501, et seq., known as the "Local Planning Act of 1975." The
20 petitioners assert that Boise County's failure to adopt a land use
21 plan and implement planning and zoning in the county has permitted
22 unregulated growth, resulting in decreased property values,
23 deteriorating residences, incompatible uses of adjoining
24 properties, and multiple residences upon single lots.

25 The petitioners have moved for partial summary judgment,

1 limiting the motion to relief through the writ of mandamus, and ask
2 the court to issue the writ to compel Boise County to exercise the
3 power conferred upon it by the Local Planning Act and implement
4 planning and zoning immediately. They seek compensation for the
5 loss of value to their property due to the lack of regulation, and
6 fees and costs, and ask the court to establish a time frame within
7 which the county may comply.

8 Boise County asserts that the petitioners have not established
9 the necessary elements for a writ of mandamus to issue,
10 specifically, that the petitioners have not shown: 1) they have
11 been damaged; 2) they have no other remedies at law; 3) they have
12 a clear right to the relief requested; and 4) that the enactment of
13 a zoning ordinance is a mandatory rather than a discretionary
14 function.

15 Summary judgment is appropriate when, after construing the
16 pleadings, depositions, admissions and affidavits in the light most
17 favorable to the non-moving party, no material issues of fact
18 remain and the moving party is entitled to judgment as a matter of
19 law. I.R.C.P. 56(c); Myers v. A.O. Smith Harvestore Products,
20 Inc., 114 Idaho 432, 757 P.2d 695 (Ct. App. 1988); McCasland v.
21 Floribec, 106 Idaho 841, 683 P.2d 877 (1984). Summary judgment may
22 be granted in the present case only if the record reveals that the
23 petitioners have established the requisite elements and
24 applicability of the writ of mandamus, and as a matter of law are
25 entitled to the writ to compel Boise County to comply with the

directives of the Local Planning Act.

1 Idaho Code § 7-302 (1881) governs the issuance of the writ of
2 mandamus:

3 When and by what courts issued. - It may be issued by
4 any court except a justice's or probate court, to any
5 inferior tribunal, corporation, board or person, to
6 compel the performance of an act which the law especially
7 enjoins as a duty resulting from an office, trust or
8 station; or to compel the admission of a party to the use
9 and the enjoyment of a right or office to which he is
10 entitled, and from which he is unlawfully precluded by
11 such inferior tribunal, corporation, board or person.

12 This court has the authority to issue such a writ. See Adams
13 County Abstract Co. v. Fisk, 117 Idaho 513, 515, 788 P.2d 1336,
14 1338 (Ct. App. 1990): "a district court has the power through a
15 writ of mandamus to compel a county official's performance of an
16 act which the law enumerates as a duty of office"; and Hunke v.
17 Foote, 84 Idaho 391, 373 P.2d 322 (1962) (the allowance or refusal
18 of a writ of mandamus is a matter of discretion with the court
19 before whom the application for it is heard).

20 The general requirements of the writ of mandate were examined
21 in Idaho Falls Redev. Agency v. Countryman, 118 Idaho 43, 44, 794
22 P.2d 632, 633 (1990): "[m]andamus will lie if the officer against
23 whom the writ is brought has a 'clear legal duty' to perform the
24 desired act, and if the act sought to be compelled is ministerial
25 or executive in nature[,]" citing Utah Power & Light Co. v.
26 Campbell, 108 Idaho 950, 953, 703 P.2d 714, 717 (1985). The
Countryman Court went on to state that "[t]he law requires more
than conclusions and allegations to warrant the issuance of a writ

of mandamus." 118 Idaho at 45, 794 P.2d at 634. See also Beem v. Davis, 31 Idaho 730, 175 P. 959 (1918) (a writ of mandamus lies to compel public officers to perform their official duties, though details of such performance are left to their discretion).

I.C. § 7-303 (1881) further requires the following:

Absence of adequate remedy. - The writ must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It must be issued upon affidavit, on the application of the party beneficially interested.

Boise County objects to the petition in the present case in that there are no accompanying affidavits. While the language of section 7-303 suggests it is in fact mandatory to file an accompanying affidavit, the petition in the present case is verified, and, in substance, satisfies the statutory requirement. See, for example, State ex rel. Graham v. Enking, 59 Idaho 321, 82 P.2d 649 (1938) (in a mandamus proceeding, the filing of a verified petition satisfied the statutory requirement that the writ must be issued upon affidavit). Therefore, the lack of accompanying affidavits is not a fatal defect to the petition.

Further, Boise County argues that the petitioners offer no evidence in support of their contention that they have no plain, speedy and adequate remedy at law. See Idaho Falls Redev. Agency v. Countryman, 118 Idaho 43, 794 P.2d 632 (1990) (existence of adequate remedy in the ordinary course of law, either legal or equitable in nature, will prevent issuance of writ of mandamus, and party seeking writ must prove that no such remedy exists).

1 While it is true that the petitioners maintain a lack of other
2 adequate remedies without specifically outlining how those other
3 remedies would fail, it is nevertheless clear in this case that
4 petitioners have no plain, speedy or adequate remedy in the
5 ordinary course of law. Equitable remedies are ineffective under
6 these circumstances. An injunction is of no use to the petitioners
7 who they are attempting to affirmatively compel the performance of
8 an official act, not preclude it. Specific performance, on the
9 other hand, is available only when legal remedies are inadequate,
10 see Perron v. Hale, 108 Idaho 578, 701 P.2d 198 (1985), making it
11 inapplicable in the instant case, as mandamus and money damages are
12 in fact adequate legal remedies. See 52 Am Jur 2d, MANDAMUS §§ 10,
13 69. A declaratory judgment, while perhaps sufficient to judicially
14 declare the status of the parties, would not necessarily end the
15 controversy by mandating present action by the county. A legal
16 remedy, such as a civil action for monetary damages, might address
17 the present damages of the petitioners in their specific loss of
18 property value, yet it fails to address the continuing problem of
19 unregulated growth.

20 Consequently, a writ of mandamus is an appropriate remedy in
21 this case. See also Beem v. Davis, 31 Idaho 730, 735, 175 P. 959,
22 961 (1918): "we do not think that because a private citizen may
23 redress his private injury in a private suit, at law or in equity,
24 he is thereby deprived of his right as a citizen to require public
25 officials to perform a legal duty"; and District Board of Health of

1 Public Health Dist. No. 5 v. Chancey, 94 Idaho 944, 500 P.2d 845
2 (1972).

3 Boise County also argues that the petitioners have offered no
4 evidence in support of their contention that they have suffered
5 damages. However, proof of damages is not a necessary prerequisite
6 to the issuance of a writ of mandamus. See Heaney v. Board of
7 Trustees of Garden Valley School Dist. No. 71, 98 Idaho 900, 575
8 P.2d 498 (1978), and Aldape v. Akins, 105 Idaho 254, 668 P.2d 130
9 (Ct. App. 1983). In Heaney, the Idaho Supreme Court stated the
10 following:

11 Mandamus is a summary and expeditious writ to compel
12 performance of an established duty, see 52 Am.Jr.2d
13 Mandamus § 4 (1970), and the party seeking it may well
14 regard the immediacy of its availability as one of its
15 primary virtues. The basis for seeking mandamus - that
16 is, default in the performance of a duty - commonly will
17 be apparent long before the fact and amount of damages
18 can be established. It is likely that the aggrieved
19 party will not wish to delay the decision on the issuance
20 of the coercive writ until the issues relevant only to a
21 damage claim can be tried.

22 Id. at 903, 575 P.2d at 501.

23 The court concluded that while Heaney had the right to join
24 his damage claim with the petition for the writ of mandamus, he was
25 not required to do so and did not forfeit his claim for damages by
26 declining to do so. This authority supports the petitioners'
contention that damages are not a necessary prerequisite to the
issuance of the writ and allows the court to issue the writ without
specific proof of damages.

27 Additionally, the statutory sections governing writs of

1 mandate do not specifically require that damages be an element of
2 the application for the writ. I.C. § 7-312 (1881) states only that
3 "if judgment be given for the applicant, he may recover damages
4 which he has sustained..." (emphasis added). Consequently, the
5 lack of tangible proof as to specific monetary damages should not
6 be a fatal flaw in the present case.

7 Boise County further argues that the petitioners have failed
8 to establish that they possess a clear legal right to enforce the
9 adoption of a land use plan while the county and/or county officers
10 against whom the writ is brought has a clear legal duty to perform
11 the desired act. However, I.C. § 67-6504 (1982) states:

12 A city council or board of county commissioners,
13 hereafter referred to as a governing board, may exercise
14 all of the powers required and authorized by this chapter
15 in accordance with this chapter. If a governing board
16 does not elect to exercise the powers conferred by this
17 chapter, it shall establish by ordinance adopted,
18 amended, or repealed in accordance with the notice and
19 hearing procedures provided in section 67-6509, Idaho
20 Code, a planning commission and a zoning commission or a
21 planning and zoning commission acting in both capacities,
22 which may act with the full authority of the governing
23 board, excluding the authority to adopt
24 ordinances....(emphasis added).

25 Moreover, section 67-6503 (1975) states that "[e]very city and
26 county shall exercise the powers conferred by this chapter." See,
27 e.g., Wyckoff v. Board of County Commissioners of Ada County, 101
28 Idaho 12, 607 P.2d 1066 (1980) (a writ of mandate will lie to
29 require administrative action in zoning matters when the parties
30 seeking the writ have a clear legal right to have an act performed
31 and the officer against whom the writ is sought has a clear duty to

act).

1 The mandatory language of the Local Planning Act as set forth
2 in sections 67-6503 and 6504 leaves no doubt that a legal right and
3 corresponding duty exist with respect to a county's adoption of a
4 land use plan, and consequently, this requirement is satisfied.

5 The remaining question raised by respondent Boise County is
6 whether the establishment of a planning and zoning commission and
7 enactment of a land use plan is discretionary or ministerial in
8 nature. A writ of mandamus will lie only for those acts that are
9 ministerial in nature. See Utah Power & Light Co. v. Campbell, 108
10 Idaho 950, 703 P.2d 714 (1985). An act is ministerial and properly
11 the subject of mandamus only if it is a positive command and so
12 plainly prescribed as to be free from doubt. U.S. v. Walker, 409
13 F.2d 477 (C.A.Idaho 1969).

14 In Gumprecht v. City of Coeur D'Alene, 104 Idaho 615, 661 P.2d
15 1214 (1983), the Idaho Supreme Court examined the issue of the
16 authority to zone and plan and concluded that exercise of such
17 authority is made mandatory by I.C. § 67-6503. The court stated
18 the following:

19 In 1975, the Idaho legislature adopted a comprehensive
20 recodification and revision of the laws of the state
21 relating to planning and zoning, in the Local Planning
22 Act of 1975. See I.C. § 67-6501 et seq.; 1975 Idaho
23 Sess. Laws, ch. 188, § 2. Section 67-6504 of that Act
24 directs that planning and zoning commissions are to be
25 established by ordinance to exercise all powers conferred
26 by the Act, other than adopting ordinances, a power which
is reserved to the governing board. I.C. § 67-6504.
Exercise of the authority to zone and plan, whether by
governing board or by the established commissions, is

made mandatory by I.C. § 67-6503 (emphasis added).

1 Id. at 617, 661 P.2d at 1216.

2 Such language makes it clear that adoption of a land use plan
3 is a ministerial duty subject to a writ of mandamus to force
4 compliance with the statutory mandates of the Local Planning Act.
5 See also, e.g., Dist. Bd. of Health v. Chancey, 94 Idaho 944, 500
6 P.2d 845 (1972) (no discretion existed in a board of county
7 commissioners to avoid the duty imposed by S.L. 1970, ch. 90, § 17
8 (now repealed, see I.C. § 39-424) on the various counties to
9 participate in the financing of public health districts and
10 therefore the duty was ministerial and subject to a writ of
11 mandate).

12 Finally, the holding of the Idaho Supreme Court in Beem v.
13 Davis, 31 Idaho 730, 175 P. 959 (1918), is instructional: "[t]he
14 fact that certain details are left to the discretion of the
15 authorities does not prevent relief by mandamus." 31 Idaho at 736,
16 175 P. at 961. The present case falls squarely within this
17 concept. While Boise County must establish a planning and zoning
18 commission and adopt a land use plan in compliance with the
19 procedures set forth in the Local Planning Act, the particular
20 details of the day to day operation of the commission and the type
21 of comprehensive zoning system to be employed are left to the
22 discretion of the county. However, such discretion does not
23 prevent issuance of the writ to compel the initial act of
24 establishing the commission and adopting the zoning plan.

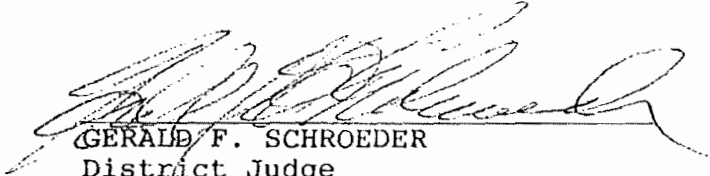
25 MEMORANDUM DECISION - Page 9

26
00203

1 Summary judgment is appropriate, and a writ of mandate shall
2 issue to require Boise County to comply with the directives of the
3 Local Planning Act, I.C. § 67-6501 et seq., and initiate a
4 comprehensive planning and zoning scheme.

5 The court defers the question of whether the petitioners are
6 entitled to an award of damages.

7 DATED this 6 day of March, 1992.

8 
9 GERALD F. SCHROEDER
10 District Judge

In the Supreme Court of the State of Idaho

DISTRICT COURT BOISE COUNTY, IDAHO
Recorded in Book _____ Page _____

Filed **MAY 17 2007** No. _____
By *[Signature]* CONSTANCE SWEARINGEN, Clerk
DEPUTY

BOISE COUNTY, a political subdivision of the)
State of Idaho,)
Plaintiff-Respondent,)
v.)
BRUCE A. LUND,)
Defendant-Appellant.)

REMITTITUR
NO. 33351

TO: FOURTH JUDICIAL DISTRICT, COUNTY OF BOISE.

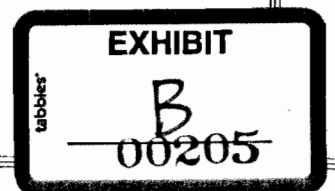
The Court having entered an Order dismissing this appeal on April 5, 2007;
therefore,

IT IS HEREBY ORDERED that the appeal herein from the Judgment of the
District Court be, and hereby is, dismissed.

DATED this 5th day of April, 2007.

[Signature]
Clerk of the Supreme Court
STATE OF IDAHO
[Signature]

cc: Counsel of Record
District Court Clerk
District Judge



By [Signature] **ROSA A. CANODY, Clerk**
DEPUTY

Bruce A. Lund
7267 Highway 21
Lowman, Idaho 83637
Tel (208) 259-3338
Fax 92080 259-3348

Pro Se/Appellant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOISE OF THE STATE OF IDAHO

CIVIL SUIT, Original Action)
BRUCE A. LUND,)
Appellant,)

Case No. CV 2005-0116

vs.)

NOTICE OF APPEAL

BOISE COUNTY, a political subdivision)
of the State of Idaho,)
Respondent,)

TO: THE ABOVE NAMED RESPONDENTS, BOISE COUNTY, AND THE PARTIES ATTORNEY, TERESA GARDUNIA, 420 MAIN ST., IDAHO CITY, IDAHO 83631, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, Bruce A. Lund, appeals against the above named respondent to the Idaho Supreme Court from the final judgment and the order, enjoining the appellant in the respondent's request for relief of the appellant allegedly violating the Boise County Zoning and Development Ordinance, in the civil case # CV- 2005-0116, entered in the above titled action, on the 28th day of June, Honorable Judge Kathryn Sticklin presiding.
2. That the party has the right to appeal to the Idaho Supreme Court, and the judgment or orders described in paragraph one (1) above are appealable orders under and pursuant to Rule 11 (a) (1) I.A.R..
3. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal.

Defendant shall, within 90 days of the Court's order, comply with the requirements of Boise County's Zoning and Development Ordinance as it relates to conditional uses by obtaining a conditional use permit or by removal of all equipment, vehicles, and waste from Parcel 3, the subject property.

FURTHER, Defendant shall, within 90 days of the Court's order, comply with the requirements of Boise County's Zoning and Development Ordinance as it relates to conditional uses by obtaining a conditional use permit or by removal of the mobile home from Parcel 3, the subject property.

IT IS SO ORDERED.

DATED this 14th day of July, 2006.

Kathryn O. Stickler

Honorable Kathryn Stickler
District Judge

MAY 28 2010

J. DAVID NAY...
By E. CHILE
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

COUNTY OF BOISE, a political subdivision
of the State of Idaho,

Plaintiff,

vs.

IDAHO COUNTIES RISK MANAGEMENT
PROGRAM, UNDERWRITERS (ICRMP),
and DOES 1 through X,

Defendants.

Case No. CV OC 2009-20083

DECISION

This case involves a coverage dispute between Idaho Counties Risk Management Program Underwriters (ICRMP) and its insured, the County of Boise. Boise County filed this declaratory judgment action on October 21, 2009, and alleged ICRMP's denial of coverage and refusal to defend certain federal litigation breached its contract with it.

ICRMP moved for summary judgment on February 10, 2010. Boise County filed its motion for summary judgment on March 24, 2010. The Court heard argument on May 20, 2010, and took the matter under advisement on May 21, 2010.

Based on the following, the Court grants summary judgment to the Idaho Counties Risk Management Program Underwriters.

FACTUAL BACKGROUND

In January 2008, Alamar Ranch LLC (Alamar) filed a lawsuit against Boise County in the United States District Court for the District of Idaho. After reviewing the allegations in the complaint, ICRMP denied coverage and refused to defend on the grounds the allegations in the Alamar Ranch complaint did not allege claims that were covered under the terms and conditions of the ICRMP insurance policy.

Relevant to the Court's analysis, Alamar alleged in its Complaint the following facts relevant to the Court's analysis:

1. On April 19, 2007, Alamar applied for a conditional use permit ("CUP") to develop a residential treatment facility and private school on its property for

EC

handicapped persons (at risk youth). Alamar further alleged it satisfied all the conditions for obtaining a CUP.

2. Boise County held public hearings on Alamar's application before the planning and zoning ("P&Z") board on August 2, 2007, and August 15, 2007. There was considerable public opposition to Alamar's application for a CUP.

3. In a written decision dated September 28, 2007, the P&Z board denied Alamar's application for a CUP on the basis that a residential treatment center was inappropriate for the location at the current time and that the County lacked sufficient infrastructure or money to monitor and enforce the conditions proposed for the application.

4. Alamar filed a timely appeal on October 18, 2007, to the Boise County Board of Commissioners ("Board").

5. The Board heard the appeal at a public hearing on January 28, 2008.

6. The Board deliberated the matter at a March 10, 2008 meeting, and imposed various restrictions that Alamar claimed made the project economically unfeasible.

7. The Board issued a written decision and order on April 21, 2008.

8. The conditions imposed by the Board were a pretext for the Board's discriminatory motive.

In particular, Alamar alleged that Boise County violated the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, by:

1. Failing to accommodate handicapped individuals by "placing onerous, arbitrary and unreasonable conditions on the approval of the application which destroyed the feasibility of the project."

2. Engaging in impermissible disparate treatment by placing "onerous, arbitrary and unreasonable conditions on the permit," while approving other developments without such conditions.

3. Unlawfully interfering with the anticipated residents of such project "by obstructing the construction or availability of housing...."

In its complaint, Alamar more specifically alleged that the P&Z commissioners violated the Fair Housing Act in denying it a CUP "[b]ecause there was no basis within the CUP standards to deny the application, the P&Z commissioners, as a pretext, manufactured ... reasons for the denial...." (Emphasis added.) Alamar further alleged that on appeal to the County Board of Commissioners, the Board "carried out its discriminatory purpose of preventing the project from being built by knowingly imposing numerous conditions on the CUP that individually or cumulatively made the proposed use of the property impossible," and that "the conditions were a pretext designed to conceal the Board's discriminatory motive of preventing the project from being

built.” According to Alamar, “[i]n essence, Boise County refused Alamar’s request for reasonable accommodations by placing conditions on the CUP aimed at ensuring the project would not be economically feasible,”

At the time, Boise County had in force a Public Entity Multi-Lines Insurance Policy (Policy) which it had procured from ICRMP and it tendered a claim for defense and indemnification which was denied by ICRMP. Boise County claims ICRMP had a duty to defend based on the Errors and Omissions Insuring Agreement found at Section IV, pg. 24 of the Policy. Section IV provided in relevant part as follows:

COVERAGE A. We agree, subject to the terms and conditions of this Coverage, to pay on your behalf all sums which you shall become legally obligated to pay as **damages** because of any **claim** which is **first made** against you during this Policy Period, arising out of any **wrongful act** by you.

All **wrongful acts**, including all related **wrongful acts**, must take place after the retroactive date, if any, shown in the Declaration Page and before the end of this Policy Period. A **claim** may also be **first made** against you if it is made during any Extended Reporting Period we may provide pursuant to the Specific Conditions outlined in this section below.

(Emphasis in the original.) The term “wrongful act” is defined at Para. 7, as follows:

“Wrongful Act” means the negligent performance of or failure to perform a legal duty or responsibility in a tortious manner pursuant to the Idaho Tort Claims Act or be premised upon allegations of unlawful violations of civil rights pursuant to Federal law arising out of public office or position.

(Emphasis in the original.) The relevant exclusions in the Errors & Omissions Section are found at pages 25 through 26 of the Policy and read as follows:

The Errors and Omissions Insuring Agreement does not cover any **claim**:

...
2. Arising out of any dishonest, fraudulent, criminal, malicious, deliberate or intended **wrongful act** committed by you or at your direction.

...
4. Resulting from a **wrongful act** intended or expected from the standpoint of any **insured** to cause **damages**. This exclusion applies even if the **damages** claimed are of a different kind or degree than that intended or expected.

...
12. To any **claim** of liability arising out of or in any way connected with the operation of the principles of eminent domain, condemnation proceedings, inverse condemnation, annexation, regulatory takings, land use regulation or planning and zoning activities or proceedings, however characterized, whether such liability accrues directly against you or by virtue of any agreement entered into by or on your behalf.

...

16. No *claim* exists where the alleged harm for which compensation is sought derives from performance or nonperformance of terms of a contract, concerns the measure of performance or payment related to contract performance, derives from fines, penalties or administrative sanctions imposed by a governmental agency, or is generated by intergovernmental handling or allocation of funds according to the law. The *claims* for which this section¹ provides defense and indemnification must arise out of conduct of a tortious nature or be premised upon allegations of unlawful violation of civil rights pursuant to state or federal law.

(Emphasis in the original.)

The Policy General Exclusions section, at page 7, sets forth the Policy's coverage for civil penalties and punitive damages as follows:

Unless otherwise stated, these exclusions are applicable to ALL Sections of this Policy.

1. **Civil and Criminal Penalties.** This Policy does not cover any *claim*, loss or damage resulting from any civil and criminal penalties imposed or provided for pursuant to any federal, state, or local law, statute, ordinance, or regulation, however characterized.

...

6. **Punitive Damage.** This Policy does not cover any *claim*, loss or damage for exemplary or punitive *damages*, however, characterized.

(Emphasis in the original.)

The Policy General Conditions at page 3 require ICRMP to defend as follows:

Unless otherwise stated, the following conditions are applicable to ALL Sections of this Policy.

...

8. **Defense of Claims or Suit.** We may investigate or settle any covered *claim* or *suit* against you. We will provide a defense with counsel of our choice, at our expense, if you are sued for a covered *claim*.

(Emphasis in the original.)

It is against these provisions in the Policy that the Court analyzes the parties' motions.

ANALYSIS

These motions are before the Court as cross motions for a summary judgment. Rule 56(c) of the Idaho Rules of Civil Procedure provides that summary judgment is "rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of

¹ Unlike other paragraphs throughout the Policy, the term, section, is *not* capitalized.

law.” I.R.C.P. § 56(c); *see also First Security Bank of Idaho, N.A. v. Murphy*, 131 Idaho 787, 790, 964 P.2d 654, 657 (1998). A party against whom summary judgment is sought may not merely rest on allegations contained in his pleadings, but must come forward and produce admissible evidence to contradict the assertions of the moving party and establish a genuine issue of material fact. *McCoy v. Lyons*, 120 Idaho 765, 820 P.2d 360 (1991); *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 791 P.2d 1285 (1990); *see Rhodehouse v. Stutts*, 125 Idaho 208, 211, 868 P.2d 1224, 1227 (1994). Any sworn statements that are part of the record are to be considered by the trial court in deciding whether there is a genuine issue of material fact.

In this case, neither party identified any disputed facts material to the issues before the Court.. Thus, the question before this Court is whether the allegations contained in the Alamar Ranch complaint describe claims which are entitled to coverage under the sections of the ICRMP Policy described above and, thus, imposing a duty to defend on ICRMP. The Court finds that if coverage exists, it arises only under the Errors and Omissions Insuring Agreement.²

ICRMP argues that the alleged civil rights violations and claims for punitive damages are unambiguously excluded from coverage under the Errors & Omissions Section of the Policy. Boise County, on the other hand, claims the Errors & Omissions Section provides coverage and that none of the exclusions apply to the Alamar complaint. Based on the following, the Court finds the Policy does not provide coverage.

The parties agree that the Errors & Omissions Section of the Policy applies to Alamar’s allegation and that absent an exclusion, ICRMP would have a duty to defend. However, ICRMP contends that Alamar’s claims fall within the exclusions for deliberate or intentional acts (Exclusion Paragraph 2), result from wrongful acts intended or expected (Exclusion Paragraph 4), or arise out of or are connected to land use regulation or planning and zoning activities or proceedings (Exclusion Paragraph 12). Boise County, on the other hand, urges the Court to find either that none of the exclusions enumerated by ICRMP apply or that the last sentence in Exclusion Paragraph 16 essentially re-animates coverage.

² In its opening memorandum, ICRMP moved the Court to find that there is no general liability coverage under the Policy. Because Boise County did not respond to that argument the Court finds it conceded the only Policy Section that would provide coverage would potentially be found in the Errors & Omissions Section.

I. If a policy is clear and unambiguous, the determination of the policy's meaning and legal effect is a matter of law.

Where the language in an insurance policy is clear and unambiguous, coverage must be determined in accordance with the plain meaning of the words used unless its provisions are against public policy. *Erland v. Nationwide Ins. Co.*, 136 Idaho 131, 133, 30 P.3d 286, 288 (2001); *Featherston v. Allstate Ins. Co.*, 125 Idaho 840, 875 P.2d 937 (1985). Whether an insurance policy is ambiguous is a question of law for this Court to determine. *Potlatch Grain & Seed v. Millers Mut. Fire Ins. Co.*, 138 Idaho 54, 58, 57 P.3d 765, 769 (2002); *Erland, supra*; *Mutual of Enumclaw Life Ins. Co. v. Lincoln*, 131 Idaho 454, 958 P.2d 1140, 1141 (1997); *Bondy v. Levy*, 121 Idaho 993, 997, 829 P.2d 1342, 1346 (1992). The Court finds that the provisions at issue are clear and unambiguous.

The Idaho Supreme Court has likewise ruled that if an insurance policy is clear and unambiguous, the determination of the insurance policy's meaning and legal effect are questions of law. *City of Idaho Falls v. Home Indem. Co.*, 126 Idaho 604, 607, 888 P.2d 383, 386 (1995). The meaning of the insurance policy and the intent of the parties must be determined from the plain meaning of the insurance policy's own words. *Id.*

The Idaho Supreme Court has repeatedly stated that courts must "construe a contract of insurance as it is written, and the court by construction cannot create liability not assumed by the insurer, nor make a new contract for the parties, or one different from that plainly intended, nor add words to the contract of insurance to either create or avoid liability." *Kromrei v. Aid Ins. Co.*, 110 Idaho 549, 551-552, 716 P.2d 1321, 1323-1324 (1986) (citing *Unigard Ins. Group v. Royal Globe, Etc.*, 100 Idaho 123, 128, 594 P.2d 633 (1979), quoting *Miller v. World Ins. Co.*, 76 Idaho 355, 357, 283 P.2d 581, 582 (1955)).

The steps in interpreting an insurance policy to determine coverage are well established: First, the Court examines the insuring agreement, in this case, the Policy. If there is potential coverage, the Court looks next to the exclusions. "Under Idaho law and consistent with other states, an insurer's duties to defend and indemnify are separate duties." *Hoyle v. Utica Mut. Ins. Co.*, 137 Idaho 367, 375, 48 P.2d 1256 (2002). "The duty to defend is broader than the duty to indemnify." *Id.* The duty to defend arises upon the filing of a complaint whose allegations, in whole or in part, read broadly, reveal a potential for liability that would be covered by the insured's policy. *Id.* at 372, 48 P.2d at 1261 (citing *Constr. Mgmt. Sys., Inc. v. Assurance Co. of Am.*, 135 Idaho 680, 682, 23 P.3d 142, 144 (2001); *Union Warehouse & Supply Co., Inc. v. Illinois R.B. Jones, Inc.*, 128 Idaho

660, 667, 917 P.2d 1300, 1307 (1996); *Kootenai County v. W. Cas. and Sur. Co.*, 113 Idaho 908, 910, 750 P.2d 87, 89 (1988)). How and when an insurer must determine its potential for liability and duty to defend has also been established:

[W]here there is doubt as to whether a theory of recovery within the policy coverage has been pleaded in the underlying complaint, or which is potentially included in the underlying complaint, the insurer must defend regardless of potential defenses arising under the policy or potential defenses arising under the substantive law under which the claim is brought against the insured. . . . The proper procedure for the insurer to take is to evaluate the claims and determine whether an arguable potential exists for a claim covered by the policy; if so, then the insurer must immediately step in and defend the suit.

Id. (quoting *Kootenai County*, 113 Idaho at 910-911, 750 P.2d at 89-90). Therefore, under Idaho law, if there is an arguable potential that the claims would be covered by the Policy, ICRMP must defend the Alamar suit.

The duty to defend arises “upon the filing of a complaint, whose allegations, in whole or in part, read broadly, reveal a potential for liability that would be covered by the insured’s policy.” *Amco Ins. Co. v. Tri-Spur Inv. Co.*, 140 Idaho 733, 737, 101 P.3d 226, 230 (2004). However, where there is clearly no coverage according to the policy, there is no duty to defend. *See Treasure Valley Transit v. Phila. Indem. Ins. Co.*, 139 Idaho 925, 929, 88 P.3d 744, 748 (2004); *see also Hoyle, supra*, 137 Idaho at 373 (holding that because of intentional act exclusion, there was no duty to defend as to claim of intentional breach of the covenant of good faith). Moreover, if a third-party’s complaint, read broadly, reveals no potential liability for purposes of the duty to defend, there can be no duty to indemnify. *Hoyle*, 137 Idaho at 375, 48 P.3d at 1264. If there is a later change during the third party litigation bringing the claims within coverage, the duty to defend and indemnify may arise. *Id.*

In making its analysis of the underlying lawsuit, the Court cannot consider extrinsic evidence. *See Hoyle*, 137 Idaho at 373, 48 P.3d at 1262 (citing *Construction Management v. Assurance Co. of America*, 135 Idaho 680, 684, 23 P. 3d. 142, 146 (2001)). Rather, the Court, like the insurer, is confined to examining the claims set forth in the underlying complaint filed by Alamar and the terms of the Policy to determine if there is coverage for those claims as they are asserted in the underlying complaint. *See also Amco Ins. Co.*, 140 Idaho at 738, 101 P.3d at 231. If the Court’s analysis fails to reveal coverage, ICRMP is not required to defend the liability complaint and is not obligated to indemnify the insured if it is found liable. *See Hoyle*, 137 Idaho at 375, 48 P.3d at 1264.

Against this background the Court examines both the Alamar complaint and the Policy.

II. The claims asserted in Alamar's complaint allege deliberate, intentional acts committed in, or arising out of, the planning and zoning activities and proceedings.

As set forth more fully in the Court's Factual Background, the Alamar complaint alleges it applied to the P&Z for a CUP (conditional use permit) to develop a residential treatment facility on its property for handicapped persons (at risk youth). Alamar further alleges that at the time it applied, it satisfied all the conditions for obtaining a CUP. The P&Z denied the CUP on the basis that a residential treatment center was inappropriate for the location at the current time and that Boise County lacked sufficient infrastructure or money to monitor and enforce the conditions proposed for the application..

Alamar further alleges that on appeal to the Board of Commissioners, the CUP was approved, but with several onerous conditions that made the project economically unfeasible. These general facts form the basis for the Fair Housing Act claims asserted by Alamar, and are, in fact, specifically incorporated into each of its claims.

Alamar further alleges that the P&Z's reasons given to support its decision to deny the CUP were "manufactured" as a "pretext"³ for discrimination. Alamar then alleges that the Board on appeal only granted the CUP because the Board knew it could not deny it the CUP. However, Alamar contended that the Board carried out its discriminatory purpose to prevent the project from being built by "knowingly imposing" numerous conditions that made the proposed use impossible. Alamar then alleges the "conditions were a pretext designed to conceal the Board's discriminatory motive of preventing the project from being built."

The Court finds that plain text of the Alamar complaint clearly alleges that all of the claims arise out of or are related to the disputed Boise County planning and zoning activities or proceedings. The Court further finds that Alamar clearly alleges Boise County's actions were deliberately taken with the specific intent to commit the wrongful act of discriminating against Alamar or the intended handicapped residents in violation of the Fair Housing Act. The claims also allege that Boise County deliberately tried to disguise its discriminatory motives by designing and imposing the onerous conditions for the specific purpose of making the project uneconomic.

³ According to Merriam-Webster's On-Line Dictionary, "pretext" is defined as "a purpose or motive alleged or an appearance assumed in order to cloak the real intention or state of affairs."

In summary, the undisputed facts establish that Alamar's complaint alleges a series of acts specifically intended to commit the wrongful act of discriminating against Alamar or the intended handicapped residents. Likewise, the undisputed facts establish that Alamar's complaint alleges claims that all claims arise out of the disputed Boise County planning and zoning activities or proceedings.

Finally, Alamar also requests both punitive damages pursuant to 42 U.S.C. § 3613(c), which authorizes a court to award actual and punitive damages, and injunctive relief. Punitive damages are not automatic in every Fair Housing Act claim. *Jeanty v. McKey & Poague, Inc.*, 496 F.2d 1119, 1121 (7th Cir. 1974). "Punitive damages are limited 'to cases in which the [defendant] has engaged in intentional discrimination and has done so with malice or with reckless indifference to the federally protected rights of an aggrieved individual.'" *United States v. Space Hunters, Inc.*, 429 F.3d 416, 427 (2nd Cir. 2005) (quoting *Kolstad v. Am. Dental Ass'n*, 527 U.S. 526, 529-30 (1999)). In other words, by making a claim for punitive damages, Alamar was, again, alleging intentional conduct on the part of Boise County.

III. The Terms Of The Policy Exclude Coverage.

Neither party argues that exclusions are ambiguous and the Court agrees. As a matter of law, the Court finds the exclusions relevant to the Alamar complaint are clear and unambiguous. Therefore, the Court must determine whether the exclusions act to defeat coverage of the Alamar complaint.

A. There is no coverage for intentional wrongful acts or acts intended or expected to cause damages.

The Court finds that the intentional act exclusion found at page 25, paragraph 4 of the Errors & Omissions Policy defeats coverage for any claim arising from a *wrongful act*⁴ intended or expected by the insured to cause damage. Likewise, the companion exclusion found at page 25, paragraph 2 of the Errors & Omissions Policy defeats coverage for any claim arising from any deliberate or intended wrong *wrongful act*.

⁴ "*Wrongful Act*" means the negligent performance of or failure to perform a legal duty or responsibility in a tortious manner pursuant to the Idaho Tort Claims Act or be premised upon allegations of unlawful violations of civil rights pursuant to Federal law arising out of public office or position.

The fact the damage claimed is different from what the insured intended or expected is irrelevant. *See Farmers Ins. Group v. Sessions*, 100 Idaho 914, 918, 607 P.2d 422 (1980) (intentional act exclusion required insurer to show the insured intended to cause the injury even where the actual injury is different than originally intended.), *see also Maxson v. Farmers Ins. of Idaho, Inc.*, 107 Idaho 1043, 695 P.2d 428 (1985). As the Court has found, Alamar alleges several intentional wrongful acts throughout its suit.

The Court finds the Alamar Complaint is clear in alleging that Boise County intended the wrongful act of discrimination in violation of the Fair Housing Act. The Court further finds that, contrary to Boise County's contentions, under a reasonable reading of the Alamar complaint there is no arguable potential that Alamar's claims could be interpreted as alleging negligent actions. Thus, the Court finds that coverage is excluded under the Policy and, for that reason, ICRMP does not have a duty to either defend or indemnify Boise County as to the Alamar suit.

B. There is no coverage for claims arising from or in any way connected to planning and zoning decisions and activities.

The Errors & Omissions Policy, at page 26, paragraph 12, also excludes coverage for claims arising out of land use decisions and activities, including planning and zoning. Specifically, the Errors & Omissions Policy provides an exclusion for “any *claim*⁵ of liability arising out of or in any way connected with . . . land use regulation or planning and zoning activities or proceedings, however characterized, whether such liability accrues directly against you or by virtue of any agreement entered into by or on your behalf.” (Emphasis added). All of the actions that form the basis of the Alamar complaint clearly arise out of and are connected with land use regulation or planning and zoning activities or proceedings. Even Boise County, in its Complaint for Declaratory Relief acknowledged in relevant as follows .

On or about January 13, 2009, *Alamar Ranch, LLC*, filed an action in U.S. District Court, District of Idaho, against County of Boise alleging violations of the Fair Housing Act, 42 U.S.C. § 3601 *et seq.* The violations are alleged **in connection with** the: (1) County of Boise Planning and Zoning Commission's denial of a conditional use permit for a residential treatment facility designed to house individuals allegedly protected under the Fair Housing Act . . .; and/or (2) County of Boise Board of Commissioners' imposition of conditions of permit approval that Alamar Ranch alleges were “pretext designed to conceal the Board's discriminatory motive

(Emphasis added.)

⁵ The bolded word is in the original.

The Court finds that based on the plain language of the exclusion, Alamar's claims "arise out of" and are "connected with" the land use and planning activities conducted by the County. The Court further finds that, contrary to Boise County's contentions, under a reasonable reading of the Alamar complaint there is no arguable potential that Alamar's claims could be interpreted as anything other than alleging Boise County's discriminatory actions arose out of planning and zoning or land use regulation activities or proceedings. For that reason any claims associated with Boise County's consideration of the Alamar Ranch application for a conditional use permit are excluded from coverage. Because of the exclusion, ICRMP is relieved of any duty to provide a defense for any of the claims in the Alamar complaint.

C. The ICRMP Policy excludes coverage for punitive damages.

The Alamar complaint also requests punitive damages pursuant to 42 U.S.C. § 3613(c). As described above, in order to recover punitive damages, Alamar must establish intentional discrimination undertaken with malice and reckless indifference to the rights of the plaintiff. These claims are excluded from Policy coverage under the intentional act exclusion discussed above.

Additionally, the Errors & Omissions Policy contains a very specific exclusion which reads, "[t]his policy does not cover any claim, loss or damage for exemplary or punitive damages, however characterized." See Policy pg. 7, paragraph 6. This policy language is unambiguous. For that reason, all claims in the Alamar complaint seeking punitive damages are also excluded from coverage and the Court finds that ICRMP is not obligated to defend Boise County for these particular claims.

D. The last sentence in the Errors & Omissions Policy exclusion found at page 26, paragraph 16, does not change the Court's analysis.

Finally, Boise County claims that the last sentence in Paragraph 16 overrides all the other exclusions listed in the Errors & Omissions coverage, Section IV of the Policy. As discussed in the Court's analysis, however, the Court disagrees and finds that this paragraph does not apply to any claim raised in the Alamar complaint. Paragraph 16 reads as follows:

16. No *claim* exists where the alleged harm for which compensation is sought derives from performance or nonperformance of terms of a contract, concerns the measure of performance or payment related to contract performance, derives from fines, penalties or administrative sanctions imposed by a governmental agency, or is generated by intergovernmental handling or allocation of funds according to the law. The *claims* for which this section provides defense and indemnification must arise

out of conduct of a tortious nature or be premised upon allegations of unlawful violation of civil rights pursuant to state or federal law.

(Emphasis in the original.)

The Court finds that Paragraph 16 excludes certain contractual claims from coverage under the Errors & Omissions Section. The claims Alamar made in its lawsuit did not derive from performance or nonperformance of terms of a contract, concern the measure of performance or payment related to contract performance, derive from fines, penalties or administrative sanctions imposed by a governmental agency, and did not arise from intergovernmental handling or allocation of funds. Therefore, Paragraph 16 does not apply to the Alamar complaint claims.

Moreover, contrary to Boise County's contentions, the Court finds that the last sentence simply makes clear that Paragraph 16 does not affect the general coverage for civil rights violations arising out of contract performance (like an employment contract) provided by the Errors & Omissions Section. It does not apply beyond the paragraph in which it appears. Throughout the Policy when the parties intend for the word, section, to refer to the particular Policy Section in which it appears, the word is capitalized. However, in Paragraph 16, the word, section, is not capitalized. Therefore, the Court finds that this last sentence only modifies the exclusions found in that same paragraph.

This interpretation is consistent with the General Exclusions found at page 7 of the Policy which states as follows:

3. **Contractual Liability.** This Policy does not cover any *personal injury, property damage*, or any other claimed loss, however characterized, arising directly or indirectly from the performance or nonperformance of terms of a contract, whether written, oral or implied, excepting, however, employment contract *claims* premised upon implied contracts pursuant to Section IV (Errors & Omissions).

(Emphasis in original.)

Therefore, while Boise County argues that the use of the word, section, refers to Section IV (Errors & Omissions) making that sentence applicable to the entire set of exclusions, the Court finds it does not. The Court finds that its effect is clearly and unambiguously limited to Paragraph 16.

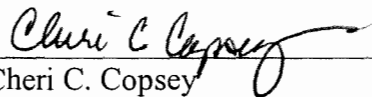
E. CONCLUSION.

The claims set forth in Alamar's Complaint all arise from or are connected with Boise County's actions and decisions regarding a planning and zoning and/or land use application. Alamar has also alleges that the wrongful conduct—discrimination of handicapped youth in violation of the

Fair Housing Act—was intentional and state a claim for punitive damages. The Policy specifically excludes coverage for intentional acts, or claims that arise from or are connected with land use and P&Z decisions or punitive damages. Because the Policy clearly excludes coverage for the claims alleged by Alamar, ICRMP is relieved of its duty to defend the suit. *Treasure Valley Transit v. Phila. Indem. Ins. Co.*, 139 Idaho 925, 929, 88 P.3d 744, 748 (2004); *Hoyle v. Utica Mut. Ins. Co.*, 137 Idaho 367, 373, 48 P.3d 1256, 1262 (2002). Accordingly, to the extent the breach of contract claim in the declaratory judgment complaint alleges ICRMP improperly refused to defend and denied coverage, ICRMP is entitled to summary judgment. The Court hereby grants ICRMP's Motion for Summary Judgment.

IT IS SO ORDERED.

DATED this 28th day of May 2010.



Cheri C. Copsey
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 28th day of May 2010, mailed (served) a true and correct copy of
the within instrument to:

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BOISE, ID 83707-7426

J. DAVID NAVARRO
Clerk of the District Court



~~John Weatherby~~ Emily Child
Deputy Clerk

JUN 07 2010

J. DAVID NAVARRO, Clerk
By J. WEATHERBY
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

COUNTY OF BOISE, a political
subdivision of the State of Idaho,

Plaintiff,

vs.

IDAHO COUNTIES RISK
MANAGEMENT PROGRAM,
UNDERWRITERS (ICRMP), and DOES
1 through X,

Defendants.

Case No. CV OC 0920083

JUDGMENT

This matter having been heard on defendants Idaho Counties Risk Management Program's (ICRMP) Motion for Summary Judgment, pursuant to Rule 56 of the Idaho Rules of Civil Procedure, and the Court having considered the pleadings, memoranda, documents and files in this action, and having heard oral arguments and having found that there is no genuine issue of fact to be submitted to the trial court and having concluded that defendant Idaho Counties Risk Management Program's (ICRMP) is entitled to judgment as a matter of law,

IT IS HEREBY ORDERED that defendants Idaho Counties Risk Management Program's (ICRMP) Motion for Summary Judgment is in all respects granted; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Complaint and causes against defendants Idaho Counties Risk Management Program's (ICRMP) be, and the same hereby are, dismissed on the merits and with prejudice.

DATED this 4th day of June, 2010.



Honorable Cheri C. Copsey

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 7 day of June, 2010, I served a true and correct copy of the foregoing **JUDGMENT** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

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- Facsimile
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J. DAVID NAVARRO



Clerk of the Court

ORIGINAL

A.M. FILED P.M. 409
JUL 09 2010
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Attorneys for Plaintiff/Appellant

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

COUNTY OF BOISE, a political
subdivision of the State of Idaho,

Plaintiff/Appellant,

vs.

IDAHO COUNTIES RISK
MANAGEMENT PROGRAM,
UNDERWRITERS (ICRMP), and
DOES I through X,

Defendant/Respondent.

Case No. CV OC 09-20083

NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, IDAHO COUNTIES RISK MANAGEMENT PROGRAM, UNDERWRITERS (ICRMP), AND THE PARTY'S ATTORNEY OF RECORD, PHILLIP J. COLLAER, AND THE CLERK OF THE ABOVE- ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant, County of Boise, appeals against the above-named Respondent, Idaho Counties Risk Management Program, Underwriters (ICRMP), to the Idaho Supreme Court from the following decision and Order entered in the above-referenced action, the Honorable Cheri C. Copsey presiding: Judgment on Defendant's Motion for Summary Judgment dated June 7, 2010.

2. Appellant has a right to appeal to the Idaho Supreme Court, and the Judgment described in paragraph 1 above is appealable under and pursuant to Idaho Appellate Rule 11(a)(1).

3. Appellant provides the following preliminary statement on appeal, which the Appellant intends to assert in the appeal. This preliminary statement, however, provides only preliminary issues and shall in no way prevent the Appellant from asserting other issues on appeal. The preliminary issues on appeal are: Did the district court err in granting Defendant's Motion for Summary Judgment?

a. Did the district court err in finding that ICRMP had no duty to defend its insured, Boise County, in the Alamar litigation under the Errors and Omissions Section of the ICRMP Policy?

b. Did the district court err in finding that the ICRMP Policy clearly and unambiguously excludes coverage for all of the claims alleged by Alamar against Boise County?

c. Did the district court err in finding that the Alamar complaint only alleged wrongful acts against Boise County, which were excluded from coverage under the ICRMP Policy?

d. Did the district court err in reading the planning and zoning exclusion of the Errors and Omissions Section of the ICRMP Policy too broadly and in interpreting that provision

in a manner that excluded the claims alleged against Boise County from coverage under the ICRMP Policy ?

e. Did the district court err in finding that the exclusions under the Errors and Omissions Section of the ICRMP Policy, including the provision under that Section that resurrected coverage for some excluded claims, were unambiguous as applied to the facts of this case?

4. The Appellant requests the reporter's standard transcript.

5. The Appellant requests the following documents to be included in the Clerk's Record, in addition to those automatically included under Idaho Appellate Rule 28:

a. Plaintiff's Motion for Partial Summary Judgment Regarding the Duty to Defend and in Opposition to Defendant's Motion for Summary Judgment;

b. Plaintiff's Memorandum in Support of Motion for Partial Summary Judgment Regarding the Duty to Defend and in Opposition to Defendant's Motion for Summary Judgment;

c. Affidavit of Robert T. Wetherell in Support of Motion for Partial Summary Judgment Regarding the Duty to Defend and in Opposition to Defendant's Motion for Summary Judgment and exhibits;

d. Affidavit of Tim McNeese in Support of Motion for Partial Summary Judgment Regarding the Duty to Defend and in Opposition to Defendant's Motion for Summary Judgment; and

e. Affidavit of Robert T. Wetherell and exhibits.

6. No additional charts or pictures offered or admitted as exhibits are requested in this Appeal.

7. I certify:

a. That a copy of this Notice of Appeal has been served on the court reporter, Kim Madsen, at the address set forth in the certificate of service attached;

b. That the clerk of the District Court has been paid the estimated fee of \$200.00 for preparation of the reporter's transcript, subject to adjustment on receipt from the clerk's office of an estimate of cost;

c. That the estimated fee for preparation of the clerk's record of \$100.00 has been paid, subject to adjustment on receipt from the clerk's office of an estimate of cost;

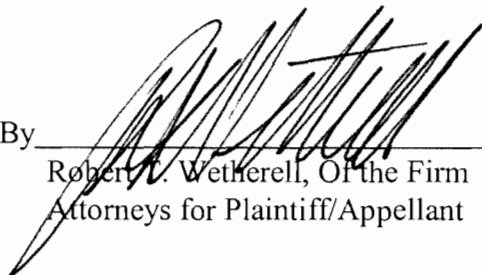
d. That the appellate filing fee has been paid;

e. That service has been made upon all parties required to be served pursuant to Idaho Appellate Rule 20.

DATED this 9 day of July, 2010.

BRASSEY, WETHERELL & CRAWFORD

By


Robert T. Wetherell, Of the Firm
Attorneys for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9 day of July, 2010, I served a true and correct copy of the foregoing upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

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Robert T. Wetherell

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Attorneys for Plaintiff/Appellant

NO. _____
A.M. _____ FILED P.M. 4:22

JUL 19 2010

J. DAVID NAVARRO, Clerk
By A. GARDEN
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

COUNTY OF BOISE, a political
subdivision of the State of Idaho,

Plaintiff/Appellant,

vs.

IDAHO COUNTIES RISK
MANAGEMENT PROGRAM,
UNDERWRITERS (ICRMP), and
DOES I through X,

Defendant/Respondent.

Case No. CV OC 09-20083

AMENDED NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENT, IDAHO COUNTIES RISK MANAGEMENT PROGRAM, UNDERWRITERS (ICRMP), AND THE PARTY'S ATTORNEY OF RECORD, PHILLIP J. COLLAER, AND THE CLERK OF THE ABOVE- ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant, County of Boise, appeals against the above-named Respondent, Idaho Counties Risk Management Program, Underwriters (ICRMP), to the Idaho Supreme Court from the following decision and Order entered in the above-referenced action, the Honorable Cheri C. Copsey presiding: Judgment on Defendant's Motion for Summary Judgment dated June 7, 2010.

2. Appellant has a right to appeal to the Idaho Supreme Court, and the Judgment described in paragraph 1 above is appealable under and pursuant to Idaho Appellate Rule 11(a)(1).

3. Appellant provides the following preliminary statement on appeal, which the Appellant intends to assert in the appeal. This preliminary statement, however, provides only preliminary issues and shall in no way prevent the Appellant from asserting other issues on appeal. The preliminary issues on appeal are: Did the district court err in granting Defendant's Motion for Summary Judgment?

a. Did the district court err in finding that ICRMP had no duty to defend its insured, Boise County, in the Alamar litigation under the Errors and Omissions Section of the ICRMP Policy?

b. Did the district court err in finding that the ICRMP Policy clearly and unambiguously excludes coverage for all of the claims alleged by Alamar against Boise County?

c. Did the district court err in finding that the Alamar complaint only alleged wrongful acts against Boise County, which were excluded from coverage under the ICRMP Policy?

d. Did the district court err in reading the planning and zoning exclusion of the Errors and Omissions Section of the ICRMP Policy too broadly and in interpreting that provision

in a manner that excluded the claims alleged against Boise County from coverage under the ICRMP Policy ?

e. Did the district court err in finding that the exclusions under the Errors and Omissions Section of the ICRMP Policy, including the provision under that Section that resurrected coverage for some excluded claims, were unambiguous as applied to the facts of this case?

4. The Appellant requests Court Reporter Kim Madsen's transcript from the Hearing on Defendant's Motion for Summary Judgment and on Plaintiff's Motion for Partial Summary Judgment Regarding the Duty to Defend and in Opposition to Defendant's Motion for Summary Judgment, held on May 20, 2010, at 3:00 p.m.

5. The Appellant requests the following documents to be included in the Clerk's Record, in addition to those automatically included under Idaho Appellate Rule 28:

- a. Plaintiff's Motion for Partial Summary Judgment Regarding the Duty to Defend and in Opposition to Defendant's Motion for Summary Judgment;
- b. Plaintiff's Memorandum in Support of Motion for Partial Summary Judgment Regarding the Duty to Defend and in Opposition to Defendant's Motion for Summary Judgment;
- c. Affidavit of Robert T. Wetherell in Support of Motion for Partial Summary Judgment Regarding the Duty to Defend and in Opposition to Defendant's Motion for Summary Judgment and exhibits;
- d. Affidavit of Tim McNeese in Support of Motion for Partial Summary Judgment Regarding the Duty to Defend and in Opposition to Defendant's Motion for Summary Judgment; and
- e. Affidavit of Robert T. Wetherell and exhibits.

6. No additional charts or pictures offered or admitted as exhibits are requested in this Appeal.

7. I certify:

a. That a copy of this Amended Notice of Appeal has been served on the court reporter, Kim Madsen, at the address set forth in the certificate of service attached;

b. That the clerk of the District Court has been paid the estimated fee of \$200.00 for preparation of the reporter's transcript, subject to adjustment on receipt from the clerk's office of an estimate of cost;

c. That the estimated fee for preparation of the clerk's record of \$100.00 has been paid, subject to adjustment on receipt from the clerk's office of an estimate of cost;

d. That the appellate filing fee has been paid;

e. That service has been made upon all parties required to be served pursuant to Idaho Appellate Rule 20.

DATED this 19 day of July, 2010.

BRASSEY, WETHERELL & CRAWFORD

By 

Robert T. Wetherell, Of the Firm
Attorneys for Plaintiff/Appellant

CERTIFICATE OF SERVICE

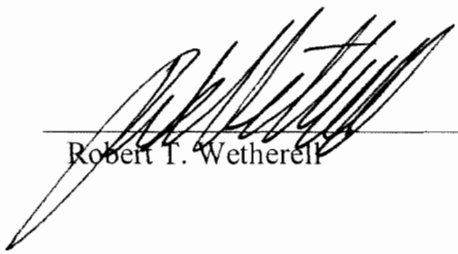
I HEREBY CERTIFY that on this 19 day of July, 2010, I served a true and correct copy of the foregoing upon each of the following individuals by causing the same to be delivered by the method and to the addresses indicated below:

Phillip J. Collaer
Anderson, Julian, & Hull
P.O. Box 7426
Boise, Idaho 83707

U.S. Mail, postage prepaid
 Hand-Delivered
 Overnight Mail
 Facsimile 344-5510

Kim Madsen, Court Reporter
Ada County Courthouse
200 W. Front St., Rm 5123
Boise, Idaho 83702

U.S. Mail, postage prepaid
 Hand-Delivered
 Overnight Mail
 Facsimile 287-7529



Robert T. Wetherell

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TO: Clerk of the Court
Idaho Supreme Court
451 West State Street
Boise, Idaho 83720

NO. _____ FILED
A.M. 8:00 P.M. _____

SEP 02 2010


J. DAVID NAVARRO, Clerk
By BRADLEY J. THIES
DEPUTY

(Case No. 37861
(COUNTY OF BOISE
(
(
(vs.
(
(ICRMP

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on August 4, 2010, I lodged an appeal transcript of 48 pages in length for the above-referenced appeal with the District Court Clerk of the County of Ada in the 4th Judicial District

This transcript contains hearings held on
...May 20, 2010


KIM I. MADSEN
Ada County Courthouse
200 West Front Street
Boise, Idaho 83702
(208) 287-7583

00237

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

COUNTY OF BOISE, a political subdivision
of the State of Idaho,

Plaintiff-Appellant,

vs.

IDAHO COUNTIES RISK MANAGEMENT
PROGRAM, UNDERWRITERS (ICRMP),
and DOES I through X,

Defendants-Respondents.

Supreme Court Case No. 37861

CERTIFICATE OF EXHIBITS

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the
State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the
course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said
Court this 2nd day of September, 2010.

J. DAVID NAVARRO
Clerk of the District Court

By BRADLEY J. THIES
Deputy Clerk

SEAL

CERTIFICATE OF EXHIBITS

00238

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

COUNTY OF BOISE, a political subdivision
of the State of Idaho,

Plaintiff-Appellant,

vs.

IDAHO COUNTIES RISK MANAGEMENT
PROGRAM, UNDERWRITERS (ICRMP),
and DOES I through X,

Defendants-Respondents.

Supreme Court Case No. 37861

CERTIFICATE OF SERVICE

I, J. DAVID NAVARRO, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

ROBERT T. WETHERELL
ATTORNEY FOR APPELLANT
BOISE, IDAHO

PHILLIP J. COLLAER
ATTORNEY FOR RESPONDENT
BOISE, IDAHO

J. DAVID NAVARRO
Clerk of the District Court

Date of Service: SEP 03 2010

By BRADLEY J. THIES
Deputy Clerk

CERTIFICATE OF SERVICE

00239

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

COUNTY OF BOISE, a political subdivision
of the State of Idaho,

Plaintiff-Appellant,

vs.

IDAHO COUNTIES RISK MANAGEMENT
PROGRAM, UNDERWRITERS (ICRMP),
and DOES I through X,

Defendants-Respondents.

Supreme Court Case No. 37861

CERTIFICATE TO RECORD

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 9th day of July, 2010.

J. DAVID NAVARRO
Clerk of the District Court

By BRADLEY J. THIES
Deputy Clerk



CERTIFICATE TO RECORD

00240